DOCKET

No. 07-10374
Title: Keith Haywood, Petitioner
v.
Curtis Drown, et al.
Docketed: April 15, 2008
Lower Ct: Court of Appeals of New York
Case Nos.: (146)
Decision Date: November 27, 2007

Questions Presented

---Date---	--------Proceedings and Orders--------------------
Jan 28 2008	Application (07A188) to extend the time to file a petition for a writ of certiorari from February 25, 2008 to April 25, 2008, submitted to Justice Ginsburg.
Jan 30 2008	Application (07A188) granted by Justice Ginsburg extending the time to file until April 25, 2008.
Apr 9 2008	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due May 15, 2008)
May 8 2008	Brief amicus curiae of Prisoners' Legal Services of New York filed.
May 14 2008	Brief of respondents Curtis Drown, et al. in opposition filed.
May 22 2008	Reply of petitioner Keith Haywood filed.
May 28 2008	DISTRIBUTED for Conference of June 12, 2008.
Jun 16 2008	Motion to proceed in forma pauperis and petition for a writ of certiorari GRANTED.
Jul 10 2008	The time within which to file the joint appendix and petitioner's brief on the merits is extended to and including August 14, 2008.
Jul 10 2008	The time within which to file respondents' brief on the merits is extended to and including September 29, 2008.
Aug 14 2008	Joint appendix filed. Statement of costs received.
Aug 14 2008	Brief of petitioner Keith Haywood filed.
Aug 19 2008	Brief amici curiae of Prisoners' Legal Services of New York, et al. filed.
Aug 20 2008	Brief amici curiae of Professors of Constitutional Law and of Federal Jurisdiction filed.
Sep 8 2008	SET FOR ARGUMENT ON Wednesday, December 3, 2008
Sep 12 2008	CIRCULATED.
Sep 29 2008	Brief of respondents Curtis Drown, et al. filed. (Distributed)
Oct 11 2008	Record received from the Court of Appeals for New York. (1 envelope)
Oct 21 2008	Record received from the Wyoming County Clerk's Office. (1 envelope)
Oct 29 2008	Reply of petitioner Keith Haywood filed. (Distributed)
Dec 3 2008	Argued. For petitioner: Jason E. Murtagh, Philadelphia, Penn. For

respondents: Barbara D. Underwood, Solicitor General, New York, N.Y.

PETITION
FOR
WRIT OF
CERTIORARI

No. 07-__

In the Supreme Court of the United States

KEITH HAYWOOD,

Petitioner,

v.

CURTIS DROWN, *ET AL.*

Respondents.

On Petition for Writ of *Certiorari* to the New York Court of Appeals

PETITION FOR A WRIT OF *CERTIORARI*

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QUESTION PRESENTED

Whether a state's withdrawal of jurisdiction over certain damages claims against state corrections employees – from state courts of general jurisdiction – may be constitutionally applied to exclude federal claims under Section 1983, especially when, as here, the state legislature withdrew jurisdiction because it concluded that permitting such lawsuits is bad policy?

RULE 14.1(b) STATEMENT

Petitioner Keith Haywood is an individual incarcerated in a state prison in New York. Respondents Curtis Drown, Pat Smith, Steve Jennett, M. Coryer, P. Devlin, and D. Bouvier are New York State Department of Corrections employees.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The litigation below involves two separate actions, which were consolidated for briefing and argument by New York's Appellate Division, and decided together by New York's Court of Appeals. The majority and dissenting opinions of the New York Court of Appeals, App. 1a, are reported at 9 N.Y.3d 481 (N.Y. 2007). The judgments of the New York Supreme Court, Appellate Division, 4th Department, App. 24a & App. 26a, are reported at 826 N.Y.S.2d 542 (N.Y. App. Div. 2006) and 825 N.Y.S.2d 417 (N.Y. App. Div. 2006). The judgments of the New York Supreme Court, County of Wyoming, App. 28a & App. 29a, are unreported.

JURISDICTION

The New York Court of Appeals issued its decision on November 27, 2007. On January 30, 2008, this Court granted petitioner an extension for filing a petition for a writ of certiorari to and including April 25, 2008. App. 30a. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Supremacy Clause of the United States Constitution, art. VI, cl. 2; Section 1 of the Civil Rights Act of 1871, *codified at* 42 U.S.C. § 1983; and Article 2, Section 24, of Chapter 43 of Consolidated Laws of New York.

The Supremacy Clause provides, in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the

Constitution or Laws of any State to the Contrary notwithstanding. U.S. Const. art. VI, cl. 2.

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

New York Corrections Law § 24 provides:

> 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department [of corrections], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

STATEMENT OF THE CASE

New York has enacted a statute that precludes prisoners from bringing most Section 1983 actions for damages against state prison employees in its courts of general jurisdiction. The state defends its statute on the ground that such lawsuits are bad policy, that they are frivolous and may interfere with state operations and state officers. The question is whether the Supremacy Clause permits states to deny access to their courts of general jurisdiction because they disagree with Congress about the overall value of such litigation – especially in light of this

Court's teachings in *Howlett v. Rose*, 496 U.S. 356 (1990), *Felder v. Casey*, 487 U.S. 131 (1988), and *Martinez v. California*, 444 U.S. 277 (1980).

New York's statute is codified as part of the state's substantive corrections laws. It creates a narrow exception to the jurisdiction of the state's courts, including its courts of general jurisdiction, in order to protect the state's corrections officers and operations. Under its terms, no private civil action may be brought in the state's courts against New York Department of Corrections' employees in their personal capacities, if the action seeks damages and alleges conduct adjudged, under state law standards, to be within the scope of employment and undertaken or omitted in the discharge of an employee's duties. *See* N.Y. Correct. Law § 24 (1).[1]

Every manner of related and equivalent action, however, may be brought in a New York supreme court, a court of general jurisdiction. These trial courts may hear all types of intentional and other tort claims. *See* N.Y. Const., art. VI, §7(a) (conferring jurisdiction over cases in law and equity to the state's supreme courts); *Pollicina v. Misericordia Hosp. Medical Ctr.*, 624 N.E.2d 974, 977 (N.Y. 1993) (noting the supreme courts' "inviolate authority to hear and resolve all causes in law and equity"); *Kagen v. Kagen*, 236 N.E.2d 475, 478 (N.Y. 1968) ("the Supreme Court is a court of original, unlimited and unqualified jurisdiction").

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[1] State law standards for scope of employment do not, however, automatically exclude conduct undertaken under color of state law that violates federal statutes or constitutional provisions. *See, e.g., Cepeda v. Coughlin*, 513 N.Y.S.2d 528 (N.Y. App. Div. 1987) (finding action alleging excessive force in violation of due process and the Eighth Amendment barred by §24 because the use of force can be within the scope of employment). Under state law, so long as the conduct occurs when the corrections officer is on duty, it is likely to be viewed as within the scope of employment and in the discharge of his duties. *See Riviello v. Waldron*, 391 N.E.2d 1278, 1281 (N.Y. 1979) ("the test has come to be whether the act was done while the servant was doing his master's work, no matter how irregularly, or with what disregard of instructions") (quotations omitted).

These state trial courts may also hear private civil actions for damages against any other state employees, including Section 1983 claims. *See, e.g., Farley v. Town of Hamburg*, 824 N.Y.S.2d 549 (N.Y. App. Div. 2006) (permitting §1983 action against a police officer for damages); *McCummings v. New York City Transit Auth.*, 580 N.Y.S.2d 931 (N.Y. App. Div. 1992) (permitting §1983 action against transit authority employee for damages).

These courts may even hear private civil actions against employees of New York's Department of Corrections, *if* (1) the actions allege conduct judged to be outside the scope of employment or the discharge of their duties as a matter of state law, or (2) the actions seek declaratory or injunctive relief. N.Y. Correct. Law §24(1). Finally, New York's supreme courts have jurisdiction over the very claims Haywood asserted – actions for damages, against corrections employees, alleging conduct found to be within the scope of employment – *if* the suit is brought by the state's attorney general on behalf of the state rather than by a private party. *Id.*

New York's statute does not apply solely to prisoners' §1983 claims. It withdraws jurisdiction over this precise type of claim against these specific state employees whether brought under state or federal law. Nonetheless, except under the precise circumstances proscribed by Correction Law §24(1), New York's supreme courts have jurisdiction over the subject matter of Section 1983 suits and over the parties here – all of whom are New York residents. They also have the power to provide the relief at issue – damages – and regularly do so.

The second provision of New York Correction Law §24 offers an alternative to suing corrections employees for damages. It permits prisoners to sue the State of New York for damages in the state's court of claims. *See* N.Y. Correct. Law §24(2).[2] In that sense, the statute represents the state legislature's determination that providing compensation for serious violations is acceptable policy but imposing a reputational, emotional and/or financial toll on these state employees is not. New York's view, therefore, is in direct contrast to Congress' view, which for more than a century has been that the better policy is to permit private parties, including prisoners, to sue individuals who – under color of state law – deprive them of their federal constitutional or statutory rights. *See* 42 U.S.C. §1983.[3]

The New York Attorney General explained that the state interest that

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[2] New York thereby offers a state law alternative in *lieu* of the federal right conferred by Congress because Section 1983 suits may not be brought against a state. *See, e.g., Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989).

[3] New York's Court of Claims also imposes various procedural limitations that do not apply to actions in the state's courts of general jurisdiction. Claimants are subject to a notice of intent requirement that shortens the statute of limitations from three years to 90 days. They have no right to a jury trial. They have no opportunity to seek punitive damages or an award of attorney fees. *See* N.Y. Ct. Cl. Act §§ 10(3), 10(3-a), 10(3-b), 12(3), 27; *Sharapata v. Islip*, 437 N.E.2d 1104, 1105 (N.Y. 1982) ("the waiver of sovereign immunity effected by section 8 of the Court of Claims Act does not permit punitive damages to be assessed against the State or its political subdivisions"). The Court of Claims is also limited to damages claims, such that any prisoner seeking both compensation and declaratory or injunctive relief would need to bring separate actions in different courts. *See* N.Y. Ct. Cl. Act §9; *Silverman v. Comptroller*, 339 N.Y.S.2d 149, 150 (N.Y. App. Div. 1972) (the Court of Claims' jurisdiction is "limited to awarding money damages against the State and is without power to grant strictly equitable relief"); *Wikarski v. New York*, 459 N.Y.S.2d 143 (N.Y. App. Div. 1983) (the Court of Claims does not have authority to render a declaratory judgment).

Correction Law §24 furthers is to "to ensure that corrections employees, when acting within the scope of their employment, are not inhibited in performing their difficult duties by the threat of voluminous, vexatious and often meritless prisoner suits against them for damages." Attorney General's Court of Appeals Brief 11-12.

The Attorney General explained further that the state statute furthers this important legislative policy because:

> The [Department of Corrections] employee is not named as a defendant in the suit, with the publicity that may attach; the employee is not served with process; the employee does not need to retain counsel or seek representation by the Attorney General under Public Officers Law §17; the employee does not have to answer the complaint; the employee does not have to seek indemnification by the State under §17 if damages are ultimately awarded; and there is no threat of attachments or liens on the employee's personal assets. By minimizing the employee's involvement in the suit, the statute markedly diminishes the ways in which a prisoner can harass and inhibit a [Department of Corrections] employee by the threat of personal damages liability.

Id. at 12 (relying on the view of New York's Court of Appeals in *Arteaga v. New York*, 527 N.E.2d 1194 (N.Y. 1988)).

The Attorney General did not comment on the impact of "minimizing the employee's involvement in the suit" on the deterrence of future violations, a goal that led Congress to permit Section 1983 suits against employees directly. *See, e.g., Wyatt v. Cole,* 504 U.S. 158, 161 (1992) ("The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails"); *accord Richardson v. McKnight*, 521 U.S. 399, 403 (1997).

State court proceedings. Keith Haywood, a prisoner in New York's Attica

Correctional Facility, filed two actions *pro se* in the Wyoming County Supreme Court in 2005, seeking damages under §1983 and state law against different Department of Corrections' employees for violations of his civil rights. His complaints alleged that the court had jurisdiction under Section 1983 and the Supremacy Clause and directed the trial court's attention to this Court's decisions in *Felder* and *Howlett*. App. 31a & App. 32a. His complaints expressly asserted that states do not have the power to confer immunity from federal claims and that a New York supreme court has general jurisdiction and is fully competent to provide the remedies permitted under Section 1983. *Id.*

New York's Attorney General, on behalf of the state corrections employees, filed motions to dismiss each case in late 2005, on the ground that New York Correction Law §24, as interpreted by some of the state's intermediate appellate courts, deprived the court of jurisdiction. Haywood filed a sworn affidavit on December 19, 2005, arguing that New York Correction Law §24's jurisdictional bar conflicted and interfered with Section 1983, and was therefore preempted under the Supremacy Clause. App. 33a.

The trial court dismissed both actions, in reliance on precedent from the state's intermediate appellate court, the Appellate Division. These orders were entered February 1, 2006. App. 28a and 29a. Haywood appealed the orders to the Appellate Division, also *pro se*, challenging the intermediate appellate precedent the trial court had relied on and asserting that the Supremacy Clause permitted his federal claims to proceed. App. 38a & App. 39a. He also moved to consolidate the appeals for briefing and argument, which was granted. App. 27a. On December 22, 2006, the Appellate Division affirmed both orders of dismissal and expressly rejected the argument that the Supremacy Clause precluded dismissal of the §1983 claims, but did not explain why it had reached this conclusion. App. 24a; App.26a.

Haywood appealed to the Court of Appeals under a New York rule which permits such appeals as of right when the Appellate Division issues a final judgment that involves interpreting the state or federal constitution or when the only issue is the constitutionality of a statute. App. 40a; New York C.P.L.R. §5601. Haywood's notice of appeal explained that he was challenging Correction Law §24 because it conflicts with federal law – Section 1983. At the request of the Court of Appeals, the undersigned counsel undertook Haywood's representation.

The New York Court of Appeals Decision. On November 27, 2007, the state's highest court affirmed in a closely split decision, four to three. App. 1a. The majority ruled that Correction Law §24's withdrawal of jurisdiction over §1983 claims against Department of Corrections employees from New York courts did not violate the Supremacy Clause. App. 1a. It reasoned that the state jurisdictional bar did not discriminate against the federal right because it applies to both state and federal damage claims against state corrections employees. It therefore concluded that the statute merely erects a neutral jurisdictional barrier, which is constitutionally permissible. App. 8a-9a.

The majority further noted the state legislature's recognition that the State of New York "is, in effect, the real party in interest when there is a challenge to a correction officer's alleged conduct arising from the discharge of official duties," and it ruled that the legislature is entitled to "exercise its prerogative to establish the subject matter jurisdiction of state courts in a manner consistent with New York's conditional waiver of sovereign immunity" and to require such claims to be brought against the state in New York's Court of Claims. App. 9a & 10a.

The dissent, representing the views of three of the Court's seven judges, argued that the state statute "frustrates the purpose of, and is inconsistent with, section 1983." App. 11a. It considered significant that New York's supreme courts "have jurisdiction over the parties and the type of claim brought" and that Correction Law §24 "immunizes a select group of state employees from section 1983 damages claims." App. 11a. The dissent argued that the legislature's concern about meritless suits from prisoners, although real, could not supplant Congress' decision "that the threat of abuse of citizens by those acting under color of state law was real enough to justify creating the section 1983 cause of action – even though many section 1983 cases lack merit." App. 14a.

The dissenting judges rejected the majority's characterization of the state statute as a neutral rule of judicial administration because it did not reflect any concern about power over the person or competence over the subject matter that jurisdictional rules are designed to protect, citing *Howlett v. Rose*, 496 U.S. 356 (1990). App. 18a. Rather, "New York State supreme courts are courts of general (i.e., original, unlimited and unqualified) jurisdiction that already hear and adjudicate state law claims for damages *and* all section 1983 claims . . . *against* *state employees (except those employed by [the Department of Corrections]).*" App. 19a & 20a (quotations and citations omitted). The dissent concluded that New York "cannot selectively refuse to enforce the federal claim." App. 20a.

The dissent agreed with the majority's characterization of the state legislature's policy. It nonetheless considered that policy unavailing, because "neither the state's policy judgment nor the purpose underlying such judgment qualifies as a neutral rule of judicial administration" that could "fall under the category of what could be a 'valid excuse.'" App. 20a, 22a.

The dissent also argued that the state statute – "which by its plain terms immunizes [Department of Corrections] employees from liability for certain conduct actionable under section 1983" – is unconstitutional because it "functions as an immunity statute that allows state courts to selectively exclude prisoner suits for damages against [corrections] personnel." App. 21a, 22a. For both reasons, the dissent concluded, the state statute is "constitutionally infirm under the Supremacy Clause." App. 23a.

REASONS FOR GRANTING THE PETITION

The New York Court of Appeals' decision is in severe tension with several decisions of this Court, affects many current and future litigants, and – if unchecked – is likely to embolden other states to selectively close their courts to those federal rights with which they disagree or to impose other burdens simply by applying their substantive legislative policies to preclude or burden identical narrowly delineated state claims. This Court's review is necessary to ensure adherence to this Court's rulings and greater uniformity in the application of the

Supremacy Clause by state courts, to clarify the limits on such jurisdictional maneuvering for all state legislatures and courts, and to alleviate a significant burden that affects and will otherwise continue to affect many thousands of litigants indefinitely.

I. THIS COURT'S REVIEW IS NEEDED TO RESOLVE THE SERIOUS TENSION BETWEEN THE DECISION BELOW AND THIS COURT'S *HOWLETT*, *FELDER*, AND *MARTINEZ* DECISIONS.

Although this Court has not reviewed a case presenting the *precise* question at issue here, its reasoning and elucidation of the governing legal principles in closely related cases are in irreconcilable tension with the New York's Court of Appeals' decision that New York's statute may constitutionally be applied to Section 1983 claims.

A. The Court of Appeals Effectively Upheld an Immunity Statute.

New York Correction Law §24 is, in purpose and effect, an immunity statute. It immunizes state corrections employees from liability for damages. The state legislature even refers to the provision in this way. For example, a pending draft bill to amend the statute to apply to an additional group of state employees states as its purpose: "To ensure that employees of the Office of Mental Health . . . receive the same immunity from civil damages as all other State employees who work in the prisons." http://public.leginfo.state.ny.us/menuf.cgi (Bill No. S332); http://assembly.state.ny.us (Bill No. A04208); *see, infra*, pp. 27-28.

New York's Attorney General, in *this* litigation, explained that the legislature's purpose in enacting New York Correction Law §24 was to protect state corrections employees from being sued. The Attorney General further specified that the statute is intended to protect these state employees from being named as defendants, being served with process, needing to seek counsel, or being at any risk of being held liable and ordered to pay damages. *See, supra,* pp. 5-6.

And even the Court of Appeals recognized that the statute's effect, and underlying purpose, is the state's "assumption of responsibility" for the official conduct of corrections employees, because "the New York Legislature has recognized that the State of New York is, in effect, the real party in interest when there is a challenge to a correction officer's alleged conduct arising from the discharge of official duties." App. 9a.

This Court has, however, made very clear that state immunity statutes may not constitutionally be applied to Section 1983 claims. *Martinez v. California* explained, in a unanimous opinion, that: "It is clear that the California immunity statute does not control this claim even though the federal cause of action is being asserted in the state courts." 444 U.S. 277, 284 (1980). *Martinez* did not need to reach whether such state employees might be immune "as a matter of federal law," *id.*, because the Court concluded that the claimants had not stated a claim under Section 1983. *Id.* at 285. The immunity statute at issue in *Martinez* undisputedly applied to state law claims that were equivalent to Section 1983 claims, and was therefore not a state statute aimed at placing federal rights at a disadvantage in comparison to rights granted under state law.

This Court has twice confirmed and clarified the rule. *Felder v. Casey* noted: "we have held that a state law that immunizes government conduct otherwise subject to suit under §1983 is preempted . . . ." 487 U.S. 131, 139 (1988) (citing *Martinez*). *Felder* explained further that such laws were preempted because "application of the state immunity law would thwart the congressional remedy," which itself establishes which immunities for state officials are consistent with Section 1983's purpose. *Id.* Two years later, *Howlett v. Rose* characterized the Court's "holding in *Martinez*" as "a State cannot immunize an official from liability for injuries compensable under federal law." 496 U.S. 356, 360 (1990). States are not free "to nullify for their own people the legislative decisions that Congress has made on behalf of all the People." *Id.* at 383.

Here, it is undisputed that the purpose and effect of New York Correction Law §24 is to immunize certain state employees from damages suits based on their actions as employees. The Court of Appeals did not explain why it did not find this dispositive. It recognized the state legislature's goal of shifting this responsibility from these state employees to the State as well as the effectiveness of the statute in doing so. The argument – that the statute immunizes state employees contrary to Congress' purposes and may not be constitutionally applied to federal claims – was presented to the Court of Appeals, and the dissent expressly adopted it. App. 21a. Thus, the decision below that Correction Law §24 is constitutional is in significant tension with prior decisions of this Court, that make clear that states may not immunize their employees from §1983 actions.

B. The Tension With This Court's Decisions Is Not Resolved By Any Distinction Between Substantive and Jurisdictional Rules.

The decision below cannot be reconciled with this Court's prior decisions on the ground that New York's statute regulates its courts' jurisdiction rather than conferring immunity in a substantive rule. This Court's decisions leave no room to find that distinction relevant for preemption purposes. Both *Howlett* and *Felder* found the preemption precept recognized in *Martinez* applicable to state procedural rules. *Howlett* applied it to find a state jurisdictional rule unconstitutional. *Felder* applied it to a state pre-filing notification requirement, finding it unconstitutional even though it applied equally to claims against government defendants under federal and state law. Both explained that the constitutional infirmity was the state's apparent policy that was contrary to Congress.' Although *Howlett* addressed a rule directed only to federal claims, it reasoned that state policy "whether presented in terms of direct disagreement with substantive federal law or simple refusal to take cognizance of the federal cause of action, flatly violates the Supremacy Clause." *Id.* at 380-81.

Thus, *Howlett* establishes that state jurisdictional rules are not immune from preemption. *Felder* establishes that state procedural rules that interfere with Congress' purposes may not be applied to federal claims brought in state courts, even if the rules apply equally to state and federal claims. And *Martinez* makes clear that states may not shield their employees from federal claims, even when brought in state courts. The only gap left into which New York's statute could conceivably fit is if this precedent could be read to leave open the possibility that states may constitutionally immunize their employees from federal claims brought in state courts by carving exceptions to the authority of their courts of general jurisdiction applicable to both federal and identical state law claims, even though states could not constitutionally contravene Congress' purposes in this manner by applying any other type of procedural rule to federal claims.

There does not, however, appear to be a principled basis for such a rule. *Felder*, for example, did not rule that the notification requirement may not constitutionally be applied to federal claims because the requirement was different in kind than a jurisdictional bar. It found the requirement preempted because it operated *like* a jurisdictional bar. *Felder*, 487 U.S. at 144 ("States . . . may no more condition the federal right to recover for violations of civil rights than bar that right altogether, particularly where those conditions grow out of a waiver of immunity").

Felder expressly recognized Wisconsin's power to impose the same impediment on state law claims, which Wisconsin – like New York – had done, but found Wisconsin's limited waiver of sovereign immunity "entirely irrelevant insofar as the assertion of the federal right is concerned," especially where "the purpose and effect of" Wisconsin's rule – like New York's – when applied to §1983 actions, is to limit "the very litigation Congress has authorized." *Id.* Thus, the Court of Appeals' justification for the New York statute as a conditional waiver of sovereign immunity – conditioned on suing the state itself in the Court of Claims – relies on the precise justification *Felder* rejected. App. 9a n.8.

C. The Court of Appeals Upheld a Jurisdictional Statute As Neutral That Did Not Reflect Concerns of Power Over Persons Or Subject Matter.

The Court of Appeals' conclusion that states have *carte blanche* in establishing the rules governing litigation in their own courts, so long as they are even-handed between identical state and federal claims, App. 7a, is not consistent with this Court's teachings. To the contrary, this Court has consistently held that federal substantive law imposes limits on such rules *as applied to federal claims. See, e.g., Felder*, 487 U.S. at 138 (noting that states "may establish the rules of procedure governing litigation in their own courts" but that "where state courts entertain a federally created cause of action, the federal right cannot be defeated by the forms of local practice.") (quotations omitted).

Thus, states may not impose rules that "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (quotations omitted). *Howlett* unanimously confirmed this principle, explaining that the "Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." 496 U.S. at 371. And *Howlett* specifically confirms that this principle governs jurisdictional rules. "The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible. . . ." *Id.*

The Court of Appeals did not discuss whether New York violated this core principle, but it clearly had. By Section 1983's express terms, Congress subjected individual state employees to suits for damages and other relief for the actions they take under color of state law and provided the immunities it deemed appropriate. New York Correction Law §24 enforces the state's contrary policy that corrections employees should *not* be subject to damages suits for what they do as corrections employees. The Attorney General confirms that the law reflects the legislature's deliberate policy choice to shield these employees from such suits. The current state legislature refers to the provision as providing "immunity" to corrections employees. The provision unquestionably has that effect. And the Court of Appeals acknowledges both this purpose and effect.

Thus, New York's statute may not be constitutionally applied to Section 1983 claims for the same reason *Felder* relied on and *Howlett* expressly confirmed. "The decision to subject state [employees] to liability for violations of federal rights was a choice that Congress, not the [State] Legislature, made, and it is a decision that the State has no authority to override." *Howlett*, 496 U.S. at 377 (quotations omitted).

Moreover, *Howlett* expressly explained, in finding the Florida rule before it invalid, that its decision was not dependent on the fact that Florida's rule applied differently to state and federal claims. Rather, *Howlett* clarified: "To the extent that the Florida law . . . reflects a substantive disagreement with the extent to which governmental entities should be held liable for their constitutional violations, that disagreement cannot override the dictates of federal law." *Id.* at 377-78.

1. New York's statute does not meet this Court's definition of a neutral rule.

Howlett identified as neutral jurisdictional rules only those rules that "reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." *Howlett*, 496 U.S. at 381. These, not enforcement of a contrary state policy, constitute a "valid excuse" for denying jurisdiction to a federal claim in a particular case. *Id.*

Neutral rules are also "uniformly applicable rule[s] of procedure," *Felder*, 487 U.S. at 141, "rooted in policies unrelated to the definition of any particular substantive cause of action, that forms no essential part of the cause of action as applied to any given plaintiff," *id.* at 145. Recognizing limited exceptions does not defeat a neutral rule, *see Johnson v. Fankell*, 520 U.S. 911 (1997), but targeting rules to impose contrary state policy does. *Felder*, 487 U.S. at 141.

Howlett further illustrates what is meant by a neutral jurisdictional rule by emphasizing that on "only three occasions" had the Court found a state law to be a valid excuse for refusing to entertain a federal claim and that "[e]ach of them involved a neutral rule of judicial administration." 496 U.S. at 374. The first involved a rule declining jurisdiction over cases in which neither party was a resident of the state. The second involved a rule uniformly limiting the territorial jurisdiction of courts that were *not* courts of general jurisdiction. The third involved the doctrine of *forum non conveniens*, which the Court held could be applied so long as it did not discriminate against the federal claim. *Id.* at 374-75.

This Court has identified one additional permissible neutral rule since *Howlett*: Idaho Appellate Rule 11(a)(1) limiting its judiciary's appellate jurisdiction to final judgments, with minor exceptions. *Johnson*, 520 U.S. 911. *Johnson* upheld application of the rule in cases involving federal claims because: (1) the rule reflected concern with the administration of the state's courts; (2) it applied to the vast majority of interlocutory orders; (3) it was not outcome-determinative because it did not determine the ultimate disposition of the case, and (4) it did not target civil rights claims against state entities or state employees. *Id.* at 918 & n.9, 919-20. Indeed, the Court noted that the rule subjected the state and its officials to possible "overenforcement of federal rights" because the effect of the general rule was that denials of their qualified immunity defenses were not reviewable until they appealed the trial court's final judgment. *Id.* at 919.

None of the state statutes upheld as neutral rules are addressed to specific types of claims or plaintiffs. None protect government defendants specifically. And none are motivated by legislative policy contrary to Congress'. Because New York's statute is addressed solely to damages claims brought by private plaintiffs against certain government employees, the Court of Appeals' conclusion that it is, nonetheless, a permissible neutral rule seems in irreconcilable tension with *Howlett* and *Felder*.

2. New York's statute falls within the category of rules identified as invalid in *Felder* and *Howlett*.

This Court has identified state rules – like New York's – that enforce policies contrary to Congress' by, for example, applying solely to actions against government defendants as *not* "neutral and uniformly applicable rule[s] of procedure" that may constitutionally be applied to federal claims. *Felder*, 487 U.S. at 141. Indeed, *Felder* found that the Wisconsin procedural statute's "defendant-specific focus . . . serves to distinguish it, rather starkly, from rules uniformly applicable to all suits, such as rules governing service of process or substitution of parties . . . ." *Id.* at 145.

The Court considered dispositive that the statute's "substantive burden [is] imposed only upon those who seek redress for injuries resulting from the use or misuse of governmental authority," which "thus conditions the right to bring suit against the very persons and entities Congress intended to subject to liability," and that it is "firmly rooted in policies very much related to, and to a large extent directly contrary to, the substantive cause of action provided those plaintiffs" by Congress. *Id.* at 141, 144-45. This "burdening of a federal right" was therefore "not the natural or permissible consequence of an otherwise neutral uniformly applicable state rule." *Id.* at 144.

Howlett expressly confirms this point, noting that the Wisconsin statute at issue in *Felder* was invalid – even though it also applied to both federal and state law actions against government defendants – because it interfered with and frustrated the substantive right Congress created. *Howlett* further emphasized that, although states have great latitude to establish the jurisdiction of their own courts, that power is not unlimited. "States may apply their own *neutral* procedural rules to federal claims, *unless* those rules are pre-empted by federal law." 496 U.S. at 372 (emphasis added). "An excuse that is inconsistent with or violates federal law is not a valid excuse." *Id.* at 371.

Moreover, *Howlett* explained that the constitution does not permit state court jurisdiction to be gerrymandered at the expense of federal claims. "A State cannot escape this constitutional obligation to enforce the rights and duties validly created . . . by the simple device of removing jurisdiction from courts otherwise competent," whether the rights were created by a different state or the Congress. 496 U.S. at 381 (quotations and citation omitted), 382 ("the same is true with respect to a state court's obligations under the Supremacy Clause"). "The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word "jurisdiction." *Id.* at 382-83.

Howlett's point was not limited to jurisdictional rules which withdraw jurisdiction from federal claims while permitting jurisdiction over identical state law claims. To the contrary, the Court expressly noted that Wisconsin could not salvage the notice requirement at issue in *Felder* – a requirement that applied equally to state and federal claims – by amending it "to provide that no state court would have jurisdiction of an action in which the plaintiff failed to give the required notice." *Id.* at 383. "The Supremacy Clause requires more than that." *Id.*

Because the New York statute at issue here applies solely to suits against government defendants in order to shift responsibility from state corrections employees to the State of New York – which is directly contrary to the right of action Congress provided in Section 1983 – the Court of Appeals' ruling that the state statute could be lawfully applied to dismiss Section 1983 claims from the state's courts of general jurisdiction is in severe tension with this Court's decisions.

Moreover, because the statute does so by "removing jurisdiction from courts otherwise competent," 496 U.S. at 381, it is particularly in tension with *Howlett*. As discussed *supra*, under New York's Correction Law §24, the precise right of action Congress bestowed on private parties is denied them but equivalent claims under state law are permitted to be brought by the state's Attorney General in New York's supreme courts. *See* New York Correct. Law §24(1). Thus, these state courts of general jurisdiction are clearly competent to hear the subject matter and provide the requested relief. These courts also have jurisdiction over the parties here, all of whom are New York residents.

In addition, these courts regularly hear the class of actions – tort claims – that this Court has repeatedly identified as comparable to §1983. *See Felder*, 487 U.S. at 141, 146 n.3 (Section 1983 constitutional injuries have "common-law tort analogues" and a state rule that treats Section 1983 suits differently than it treats intentional torts is not neutral); *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976) (Section 1983 "creates a species of tort liability"). Further, they have jurisdiction to hear *most* Section 1983 claims, including: (1) Section 1983 claims against any non-corrections state employee; (2) Section 1983 claims against corrections officers that seek injunctive or declaratory relief; and (3) Section 1983 claims against corrections officers if they arise from conduct outside the scope of their employment.

D. The Court of Appeals Upheld a Statute That Is Inconsistent With the Federal Interest in Intrastate Uniformity.

The distinction the Court of Appeals attempted to draw between *Felder* and this case does not hold. That court distinguished the Wisconsin statute *Felder* found preempted because it "predictably produces different outcomes in federal civil rights litigation based solely on whether that litigation takes place in state or federal court" which "upset the equilibrium the Supremacy Clause was designed to maintain" by subjecting Section 1983 claims in state courts to a rule "that would not apply if the action had been initiated in federal court." App. 8a n.7.

However, New York's statute operates identically. "[E]nforcement of [New

York's statute] in §1983 actions brought in state court will frequently and predictably produce different outcomes in federal civil rights litigation based solely on whether that litigation takes place in state or federal court." *Felder*, 487 U.S. at 141. Many Section 1983 actions brought in state court will be dismissed that would not have been dismissed if brought in federal court because, like Wisconsin's statute, New York's "statute confers on governmental defendants an affirmative defense" that is not available "when such an action is brought in federal court." *Id.* at 144.

If the plaintiff seeks damages and the state court determines that the alleged conduct is within the scope of employment and occurred in the discharge of the state corrections employee's duties, the statute requires the action to be dismissed. Such limitations are not placed on §1983 suits against state corrections employees in federal court. As result, "[m]any civil rights victims" will "be barred from asserting their federal right to recovery in state court," who would *not* be barred if they had sued in federal court, *id.* at 146, upsetting "the equilibrium the Supremacy Clause was designed to maintain." App 9a n.7.

New York's statute bars claimants on *different* grounds by imposing *different* limitations on the federal right than Wisconsin's statute, but that does not appear relevant to a Supremacy Clause inquiry. New York's statute limits the federal right to suits for declaratory or injunctive relief, or for damages solely for conduct outside a corrections employee's scope of employment. Although these are not preconditions like the notice requirement enacted by Wisconsin, these limitations also subtract from the rights Congress conferred and "predictably alter[] the outcome of §1983 claims depending solely on whether they are brought in state or federal court within the same State" – therefore, undermining the "federal interest in intrastate uniformity." *Felder*, 487 U.S. at 153.

As *Felder* explained, "Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations." *Id.* New York's statute, like Wisconsin's, is inconsistent with that entitlement because it is "designed to minimize governmental liability." *Id.* Indeed, New York's statute protects "the governmental officials responsible" from liability completely. Moreover, the purpose of the New York law – valid as applied to state law claims – is to also protect the state from liability for punitive damages, from liability for attorney fees, from fact-finding by a jury rather than the state's own judiciary, and from any suit filed more than 90 days after the alleged conduct occurred. New York even imposes a notice requirement, much like Wisconsin's. *See, supra*, p. 5 & n.3.

That New York's statute applies equally to state and federal claims against state corrections employees also does not distinguish it from Wisconsin's. *Felder* expressly noted that Wisconsin's statute "does not discriminate between state and federal causes of action against local governments," but nonetheless found it unconstitutional as applied to federal claims because it "discriminates against the precise type of claim Congress has created." *Id.* at 144-145. The Court of Appeals conclusion that "Section 24, therefore, does not discriminate against section 1983 actions" because it does not discriminate "solely because the suit is brought under a federal law" seems in irreconcilable tension with *Felder*, and with *Howlett*'s confirmation of *Felder*'s analysis and ruling.

II. THIS COURT'S REVIEW IS NEEDED TO PROTECT THE FEDERAL RIGHTS OF MANY THOUSANDS IN NEW YORK ALONE.

The decision below will have a sweeping impact. It settles the question of whether New York's statute excludes these Section 1983 claims from all New York courts. Absent this Court's reversal, it also settles its constitutionality in doing so. This barrier, erected by the state legislature and upheld below by the state's highest court, potentially – and indefinitely – affects all prisoners currently in New York's prisons and the tens of thousands of prisoners in New York's prison system in the future. New York currently has 70 state prisons with more than 63,000 prisoners. *See* www.docs.state.ny.us (reporting 69 prisons holding 62,300 prisoners plus one court-ordered drug treatment facility holding 902).

Absent review by this Court, tens of thousands of prisoners are being, and will continue to be, deprived of any access to state courts to sue state prison employees for damages in state courts for any violation of the rights guaranteed them under the United States Constitution. Indeed, on the day the New York Court of Appeals issued the decision below, it also dismissed an appeal of another inmate *sua sponte* on the basis of its decision in this case. *See Koehl v. Mirza*, No. 1041 (N.Y. Nov. 27, 2007).

In addition, New York's statute also precludes many claims by New York Department of Corrections employees. *See, e.g., Woodward v. New York*, 805

N.Y.S.2d 670 (N.Y. App. Div. 2005) (relying on New York Correction Law §24 to affirm the dismissal of a correction counselor's §1983 damages claims against the department, his immediate supervisors, and department management, alleging unconstitutional retaliation in employment decisions). Because New York's statute applies to any suit for damages against any officer or employee of the Department of Corrections, it also precludes suits alleging that particular supervisors or management discriminated on the basis of race, disregarded the requirements of the Family and Medical Leave Act, punished outside, unrelated political speech, or denied any of the other rights conferred by federal statute or the United States Constitution.

The Department currently employs approximately 31,500 people, and has recently sought additional funding from the legislature for hundreds of additional staff members. *See* www.docs.state.ny.us (follow Commissioner's 2008-09 budget testimony on Feb. 7, 2008); *id.* (follow Commissioner's closure testimony on Jan. 30, 2008); DOCS' Public Information Office (3/18/08 telephone call with Linda Foglio). Absent review, thousands of New York Department of Corrections employees are being, and will continue to be, deprived of any access to state courts to sue state prison supervisors and higher management for damages – even for deliberately violating their rights under federal law.

III. THIS COURT'S REVIEW IS NEEDED TO CLARIFY THESE ISSUES FOR ALL THE STATES.

A. Section 24 Presents a Tempting Template for States to Exclude or Burden Rights When They Disagree With Congress' Policies.

New York's Correction Law §24 provides an ideal template for states that disagree with Congress, or even parts of the United States Constitution. It shows them how to close their courts to any federal rights they believe were unwisely provided, and more specifically, how to do so to protect their own governmental entities and employees. Under the decision below, all that is necessary is for the state's legislature to refrain from permitting the same narrow subcategory of claims under state and federal law. Legislatures would be able to conform to this template without excluding anything they wished to include in the first place, because they would hardly be inclined to permit claims under their own law that they believe Congress was wrong-headed to permit.

The decision below also arguably provides a template for state legislatures to impose special procedural burdens on litigants attempting to vindicate federal rights when their policy conclusions are different from Congress'. Again, following the decision below, they would simply impose the special procedural burden in the same narrow subcategory of cases, whether brought under state or federal law.

The New York State Assembly already has, under consideration, legislation extending Correction Law §24 to protect an additional group of state employees from suits for damages for conduct within the scope of that employment. *See* assembly.state.ny.us/leg (follow A04208). Bill No. A04208 would amend Correction Law §24 to cover officers and employees of the Office of Mental Health. OMH employees work in prison mental health units. The legislature overtly refers to the bill as providing immunity to these state employees in the title of the bill:

> An act to amend the correction law, in relation to conforming civil immunity protection for officers or employees of the office of mental

> health, with the protections afforded to others who serve in correctional facilities operated by the department of correctional services.

Id. See also, supra, p. 11.

In another state, such legislation might protect government personnel from being sued in state court for racial discrimination in hiring. In some states, such legislation might protect employees of the state's election board from being sued in state court for intentionally preventing eligible people from voting. In others, it might protect sheriffs from being sued in state court for any reason. The only limiting principle, under the Court of Appeals' decision below, is that the same restriction must apply to both federal and state law claims.

That states may be interested in protecting their own employees and governmental entities and in imposing their own policies, even when Congress has provided otherwise, cannot be doubted. *Martinez* addressed an immunity rule enacted by the California legislature to protect state parole officers. *Felder* addressed a Wisconsin statute imposing a notification rule before any action could be filed against a state or local governmental entity or officer. *Howlett* addressed a Florida ruling that the state's courts lacked jurisdiction to hear §1983 actions against state governmental entities.

B. Clarification Is Needed To Achieve Greater Uniformity Among State Courts.

The appellate courts of the various states do not apply *Howlett, Felder, Martinez,* and *Johnson* consistently to state statutes that apply to both federal and state law claims, even when the statutes reflect state policies contrary to Congress'.

For example, Oregon's Supreme Court, in reviewing a state statute intended to protect state governmental entities and employees for conduct within the scope of their employment, reached the opposite conclusion from the court's below. Even though the statute did not purport to apply solely to federal claims, the Oregon Court ruled it could not constitutionally be applied to Section 1983 claims. *See Rogers v. Saylor*, 760 P.2d 232 (Or. 1988) (ruling that the Oregon Tort Claims Act, which limited the liability of any public body or employee acting within the scope of employment or duties to $100,000 per occurrence and precluded punitive damages altogether, could not limit liability under Section 1983).[4]

In contrast, Illinois' courts, like New York's, have repeatedly upheld an Illinois statute that withdrew jurisdiction over state and federal discrimination claims – from the state's courts of general jurisdiction – because the state favors determination of such claims by its own agency, rather than the federal EEOC or courts. *See Blount v. Stroud*, 877 N.E.2d 49 (Ill. App. Ct. 2007), *appeal denied without opinion*, 1008 Ill. LEXIS 106 (Ill. Jan. 30, 2008) (Section 1981 claim arising from alleged racial and sexual discrimination); *Meehan v. Ill. Power Co.*, 808 N.E.2d 555 (Ill. App. Ct. 2004) (ADEA claim); *Brewer v. Board of Trustees of Univ. Ill.*, 791

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[4] States have also relied on this Court's decisions in limiting the reach of other state laws. *See, e.g., Sanchez v. DeGoria*, 733 So. 2d 1103 (Fla. Dist. Ct. App. 1999) (ruling that state statute requiring claimants in any civil action to show they had a reasonable evidentiary basis for recovering punitive damages before they could seek punitive damages and relevant discovery could not be applied to Section 1983 claims); *Patel v. Thomas*, 793 P.2d 632 (Ct. App. Colo. 1990) (ruling that state jurisdictional statute that required prior exhaustion of state administrative procedures could not constitutionally be applied to state employees' federal discrimination claims).

N.E.2d 657 (Ill. App. Ct. 2003) (Section 1983 claims alleging discrimination based on race and disability against Board and individuals in both their official and individual capacities); *Faulkner-King v. Wicks*, 590 N.E.2d 511 (Ill. App. Ct. 1992) (Sections 1983, 1985, and 1986 claims arising from alleged gender discrimination and retaliation).

Illinois' statute may not be quite as egregious as New York's in that Illinois did not act solely to protect its own employees, but it did selectively manipulate state court jurisdiction to impose state agency control over a wide range of claims that Congress intended to be determined by a federal agency and the courts. *See* 775 Ill. Comp. Stat. Ann. 5/2-102; 5/3-102; 5/4-102; 5/4-103; 5/5/-102; 5/5A-102; 5/6-101; 5/8-111 (requiring discrimination claims to be adjudicated by the state's Department of Human Rights followed by appellate review under a highly deferential standard); *Mein v. Masonite Corp.*, 485 N.E.2d 312, 315 (Ill. 1985) ("the legislature intended by the Act to avoid direct access to the courts for redress of civil rights violations"); *accord Blount*, 877 N.E.2d at 61 ("The legislature's intent was also to create one administrative body to adjudicate all types of civil rights claims, whether they arose under state or federal law.").

The state jurisdictional statute did not reflect concerns about power over persons or subject matter. Illinois' circuit courts remained competent to hear tort actions and to order the types of relief sought in discrimination cases. Indeed, they remained competent to enforce orders issued by the state's Department of Human Rights in discrimination cases. *See* 775 Ill. Comp. Stat. Ann. 5/8-111(C). And

Illinois' appellate courts remained competent to hear discrimination claim appeals. *Id.* at 5/8-111(B).

Like the New York Court of Appeals below, Illinois' courts have found the statute "neutral" because it treated federal and state discrimination claims alike and reflected the clear public policy of the state legislature. *See, e.g.*, ***Blount***, 877 N.E.2d at 61-62 (concluding that the state statute "does not discriminate against federal law but, rather, treats federal and state claims alike"); ***Meehan***, 808 N.E.2d at 562-63 (finding "no discrimination against the federal" right because the statute also applied to state claims, and concluding that its decision is "supported by the clear public policy of the state" because the Illinois legislature did not want federal discrimination claims heard in Illinois courts); ***Brewer***, 791 N.E.2d at 665-66 (relying on the Illinois statute's application to analogous state-law claims and emphasizing that the "codification of public policy is for the [state] legislature"); ***Faulkner-King***, 590 N.E.2d at 518 (finding that when Congress uses state courts to enforce federal rights, "it must do so subject to all conditions which the State court imposes on other litigants").

This Court's guidance is needed to clarify whether states may substitute their own policies for Congress' so long as they treat the affected subcategory of state and federal claims identically.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: April 9, 2008

OPPOSITION
BRIEF

No. 07-10374

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH HAYWOOD,

Petitioner,

v.

CURTIS DROWN, *et al.*,

Respondents.

On Petition for Writ of Certiorari to
The New York State Court of Appeals

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QUESTION PRESENTED

New York Correction Law § 24 provides that New York State courts lack jurisdiction over *all* private damages claims against correction employees in their personal capacity for acts or omissions within the scope of employment and in the discharge of their duties, including such claims under 42 U.S.C. § 1983, and substitutes a state court damages remedy directly against the State in the New York State Court of Claims. The question presented is whether that statute violates the Supremacy Clause of the United States Constitution, art. VI, cl. 2.

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STATEMENT OF THE CASE

Petitioner, a prisoner in a New York State correctional facility, commenced two actions in New York State court against several correction employees for damages in connection with three disciplinary proceedings and an alleged altercation. Petitioner asserted claims under state law and 42 U.S.C. § 1983.

The trial court dismissed both complaints as barred by New York Correction Law § 24. (App. 28a-29a.) Section 24 provides that New York courts lack jurisdiction to entertain any private claim for damages against correction employees in their personal capacity for acts or omissions within the scope of employment and in the discharge of their duties. N.Y. Correction Law § 24(1). Such claims for damages may be brought directly against the State of New York in the New York State Court of Claims. N.Y. Correction Law § 24(2).

The New York State Appellate Division, Fourth Department, affirmed the dismissal of the claims. (App. 24a-26a.) On November 27, 2007, the New York State Court of Appeals affirmed (App. 1a-23a.) The Court of Appeals held that by withholding state court jurisdiction over all damages claims against correction employees in their personal capacities -- whether brought under federal or state law -- Correction Law § 24 does not violate the Supremacy Clause of the United States Constitution.

The Court of Appeals explained that states have broad latitude to establish the structure and subject matter jurisdiction of state courts and can decline jurisdiction over federal claims pursuant to a neutral rule that does not discriminate against federal rights. The court found that "New York does not discriminate against section 1983 actions in favor of analogous state law claims because Correction Law § 24 removes subject matter jurisdiction over any cause of action -- state or federal -- for money damages in state Supreme Court for conduct by [correction] employees." (App. 11a.) Thus, § 24 does not offend the Supremacy Clause.

REASONS FOR DENYING THE PETITION

This case does not warrant review by this Court. The statute at issue is unique to New York, and there is no split of authority among the states' highest courts on the legal issue presented. In addition, the decision by the New York Court of Appeals is of limited practical significance even in New York, both because prisoners in New York routinely bring individual capacity claims for damages under 42 U.S.C. § 1983 against correction employees in federal court, and because § 24 provides for an alternate damages remedy in the New York State Court of Claims. Finally, and in any event, the Court of Appeals correctly applied this Court's Supremacy Clause precedent.

I. There Is No Split of Authority Among the States' Highest Courts

The Court of Appeals' decision upholding a state statutory limitation on the subject matter jurisdiction of New York State courts is not of sufficient nationwide importance to warrant this Court's review. Petitioner does not identify even one other state with an identical statute, and research has not uncovered any, although the pertinent provisions of Correction Law § 24 have been in effect for 36 years. Moreover, contrary to petitioner's suggestion, there is no division among the states' highest courts on the validity under the Supremacy Clause of a limitation on the subject matter jurisdiction of state courts that does not discriminate against federal claims.

In *Rogers v. Saylor*, 760 P.2d 232 (Or. 1988), the Oregon Supreme Court did not reach "the opposite conclusion from the court's below." (Pet. 29.) In *Rogers*, the Oregon court entertained jurisdiction over the state and federal claims, and the issue was whether Oregon's statutory cap on compensatory damages and elimination of punitive damages against public bodies or officers could be applied to a federal § 1983 claim. *Id.* at 270-73. The court held that if a state court entertains a federal damages claim, it cannot then limit by state law the amount that the plaintiff may recover. The court did not consider a statute like Correction Law § 24 that withholds state court jurisdiction altogether over analogous state and federal damages claims in a manner that does not discriminate against federal rights. Indeed, the *Rogers* court noted that this Court "has never held that a state court must hear a claim based on a violation of section 1983," except "'where the same type of claim, if arising under state law, would be enforced in the state courts.'" 760 P.2d at 240 (quoting *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980)). Thus, the *Rogers* holding does not conflict with the Court of Appeals' holding here.

In fact, the sister state judicial authority that exists accords with the decision below. The Illinois intermediate appellate courts have found no Supremacy Clause infirmity in an Illinois statute that precludes original state court jurisdiction over all discrimination claims -- state or federal -- and vests jurisdiction in a state administrative agency to hear those claims. *See Blount v. Stroud*, 877 N.E.2d 49 (Ill. App. Ct. 2007), *lv. granted*, 2008 Ill. LEXIS 309 (Ill. Apr. 4, 2008); *Meehan v. Illinois Power Co.*, 808 N.E.2d 555 (Ill. App. Ct. 2004); *Brewer v. Board of Trustees of Univ. of Illinois*, 791 N.E.2d 657 (Ill. App. Ct.), *lv. denied*, 803 N.E.2d 479 (Ill. 2003), *cert. denied*, 541 U.S. 987 (2004); *Faulkner-King v. Wicks*, 590 N.E.2d 511 (Ill. App. Ct.), *lv. denied*, 602 N.E.2d 450 (Ill. 1992), *cert. denied*, 507 U.S. 960 (1993). These courts agree that where a state fashions the subject matter jurisdiction of its own courts, it does not offend the Supremacy Clause by adopting a rule that "does not discriminate against federal law but, rather, treats federal and state claims alike." *Blount*, 877 N.E.2d at 61.

There being no division among the states' highest courts on the constitutionality of a rule like New York's, this Court's review is not necessary to ensure "greater uniformity in the application of the Supremacy Clause by state courts." (Pet. 10-11.) Because Correction Law § 24 governs the subject matter jurisdiction of New York courts, the decision below hardly "provides a template for state legislatures to impose special procedural burdens on litigants attempting to vindicate federal rights" (Pet. 27) when federal claims are entertained in a state court. Thus, review is not "necessary to ensure adherence to this Court's rulings" (Pet. 10) under the Supremacy Clause with respect to future state legislation, which can be reviewed and corrected in appropriate cases if necessary.

II. Prisoners In New York Retain the Ability To Obtain Complete Redress For Violations Of Federal Or State Law

Petitioner overstates the significance of the Court of Appeals' decision, which does not prevent New York prisoners from obtaining complete redress for violations of their federal or state civil rights.

Nothing in Correction Law § 24 or the Court of Appeals' decision prevents New York prisoners from enforcing all of the federal rights cognizable under 42 U.S.C. § 1983. Prisoners remain free to use the federal courts to pursue § 1983 claims against New York correction employees in their individual capacities and to seek the full panoply of remedies under the federal act, including damages. Indeed, because state courts "are precisely the courts Congress sought to allow civil rights claimants to avoid through § 1983," *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989), the overwhelming majority of § 1983 lawsuits are brought in federal court, where prisoner § 1983 damages suits against New York correction employees are legion. *See Woodford v. Ngo*, 126 S. Ct. 2378, 2388 n.4 (2006) (noting that "prisoner civil rights and prison conditions cases still account for an outsized share of filings" in federal court, averaging from 2000 through 2005 "about one new prisoner case every other week for each of the nearly 1,000 active and senior district judges across the country"). Thus, the practical impact of Correction Law § 24's application to § 1983 claims is marginal at best.

In addition, if a correction employee acts outside of the scope of employment, Correction Law § 24 does not bar a § 1983 claim in New York court at all, including a damages claim against the employee personally. And even where the employee acts within the scope of employment, nothing in § 24 prevents the employee from being sued under § 1983 in state court for injunctive or declaratory relief to address an ongoing violation of federal law.

Finally, Correction Law § 24 provides for an alternate state court damages remedy for injuries stemming from unlawful conduct of correction employees within the scope of employment. Pursuant to § 24(2), a plaintiff may recover damages directly from the State in the New York Court of Claims. Because § 24 applies only if the employee was acting within the scope of employment, the employee generally would have been indemnified by the State in any event. *See* N.Y. Public Officers Law § 17(3)(a) (providing for the State's indemnification of employees where "the act or omission from which [a] judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties"). The New York Court of Claims has jurisdiction over state constitutional tort claims against the State, and provisions of the New York Constitution generally provide protections at least as broad as their counterparts in the United States Constitution. *See Brown v. State of New York*, 674 N.E.2d 1129 (N.Y. 1996).

For these reasons, this Court's review is not necessary to ensure that prisoners in New York retain the ability to obtain redress for violations of law by correction employees, including the rights protected by § 1983.

III. The Court of Appeals' Decision Correctly Applies This Court's Supremacy Clause Precedent

As petitioner acknowledges, this Court has already articulated "the governing legal principles in closely related cases." (Pet. 11.) This Court's Supremacy Clause jurisprudence does not require state courts to entertain federal claims where the same type of state law claim would not be enforced in the state court. Review is also not warranted because the New York Court of Appeals' decision correctly applied this settled principle.

This Court has "never held that state courts must entertain § 1983 suits." *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 587 n.4 (1995). To the contrary, "[t]he requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent to hear the case in which the federal claim is presented." *Howlett v. Rose*, 496 U.S. 356, 372 (1990). This Court has stressed the states' "great latitude to establish the structure and jurisdiction of their own courts" and that, as a general rule, "'federal law takes the state courts as it finds them.'" *Id.* (quoting Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954)).

The Supremacy Clause permits states to decline jurisdiction over federal claims if they have a "valid excuse," including a "neutral state rule regarding the administration of the courts."

Howlett, 496 U.S. at 369, 372. A rule will be deemed valid and neutral if it does not discriminate against federal claims in favor of analogous state law claims. *See McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 233-34 (1934). Thus, "where the same type of claim, if arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim." *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980). What the Supremacy Clause does not tolerate is a state court's refusal to entertain a federal claim "'solely because the suit is brought under a federal law.'" *Howlett*, 496 U.S. at 373 (quoting *McKnett*, 292 U.S. at 233-34).

Applying these principles, this Court has consistently upheld state rules that did not discriminate against federal claims and has struck down those that did. *Compare Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1, 4 (1950) (affirming "the power of a State to deny access to its courts to persons seeking recovery under [a federal statute] if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially . . . , so as not to involve a discrimination against [federal] suits"), *and Herb v. Pitcairn*, 324 U.S. 117, 123 (1945) (while freedom of state court to decline jurisdiction was "of course, subject to the qualification that the cause of action must not be discriminated against because it is a federal one," no violation where analogous cases brought under state statutes or common law would have been dismissed under the same circumstances), *with McKnett*, 292 U.S. at 232-34 (where denial of jurisdiction was "based solely upon the [federal] source of law sought to be enforced," state court could not refuse to exercise jurisdiction) *and Testa v. Katt*, 330 U.S. 386, 394 (1947) (where it was conceded that "this same type of claim arising under [state] law" would be enforced by the state court, it was not free to refuse enforcement of the federal claim).

Applying this precedent, the Court of Appeals correctly held that Correction Law § 24 does not offend the Supremacy Clause. As the court explained, "[t]he statute, by emphasizing that '[n]o civil action shall be brought in any court of the state,' creates a neutral jurisdictional barrier to all claims -- state and federal -- for monetary damages in a state court against any correction officer in his or her personal capacity for actions within the scope of employment." (App. 8a.) The statute furthers New York's legitimate interest in minimizing the disruptive effect of prisoner damages claims against correction employees, many of which are frivolous and vexatious. *See Jones v. Bock*, 127 S. Ct. 910, 914 (2007) ("Most of these cases have no merit; many are frivolous."). The rule also promotes the efficient administration of New York's finite judicial resources by substituting the State as defendant and channeling this litigation into New York's Court of Claims, which has exclusive jurisdiction to hear, and expertise in adjudicating, damages claims against the State. *See* N.Y. Court of Claims Act § 9; *see also Johnson v. Fankell*, 520 U.S. 911, 922 n.13 (1975) ("We have made it quite clear that it is a matter for each State to decide how to structure its judicial system."). Because these interests are furthered by a neutral jurisdictional rule that does not discriminate against § 1983 or other federal claims, the statute does not violate the Supremacy Clause.

The Court of Appeals' decision is not, as petitioner claims (Pet. 11-25), inconsistent with the holdings in *Howlett*, *Martinez*, and *Felder v. Casey*, 487 U.S. 131 (1988). In *Howlett*, the state provided a sovereign immunity defense to a school board with respect to a § 1983 claim in state court that did not apply to related state law claims, violating the nondiscrimination principle. 469 U.S. at 359, 364. In *Martinez*, this Court observed that a "state immunity defense" could not control a § 1983 claim where the state court "accepted jurisdiction of this federal claim." 444 U.S. at 283-84, nn.7-8. And in *Felder*, this Court held that a state could not apply its notice of claim statute to a § 1983 claim entertained in state court, thereby requiring the plaintiff to comply with a condition precedent to suit that would not apply in federal court and that redefined the essential elements of the federal cause of action. 487 U.S. at 144.

Correction Law § 24 is not analogous to the foregoing rules and does not suffer from the same infirmities. As the Court of

Appeals held, the plain language of § 24 does not confer an immunity defense, but rather bars New York courts from entertaining jurisdiction over any such claims at all. *See Johnson*, 520 U.S. at 916 ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the state."). Nor does the statute apply a condition precedent to a federal claim in state court in an attempt to redefine its elements. Rather, it neutrally applies a rule of subject matter jurisdiction and denies a state judicial forum to all similar claims for damages against correction employees in their personal capacities, whether arising under state or federal law. For these reasons, the Court of Appeals correctly held that the provision falls with the New York's broad authority to establish the structure and subject matter jurisdiction of its own courts.

CONCLUSION

The petition for a writ of certiorari should be denied.

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REPLY
BRIEF

No. 07-10374

In the Supreme Court of the United States

KEITH HAYWOOD,
Petitioner,
v.
CURTIS DROWN, *ET AL.*
Respondents.

On Petition for a Writ of *Certiorari* to the New York Court of Appeals

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF *CERTIORARI*

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May 22, 2008

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REPLY BRIEF

Nothing in the New York Attorney General's opposition weakens the case for this Court's review or supports the New York Court of Appeals' decision. The Attorney General does not deny that the decision below limits the access of New York's prisoners to its courts to vindicate federal rights today, and foreseeably forever. He does not deny that it imposes the same limits on anyone else harmed by state corrections employees, including other corrections employees. *See* Pet. 25-28. He does not deny that the state legislature refers to the statute at issue as immunizing state corrections employees. And he does not deny that the effect of the statute *is* to immunize these state employees from most private damages suits.

The Attorney General also does not deny that New York's courts entertain Section 1983 suits under virtually all circumstances, including any Section 1983 suit brought against state employees who work for agencies other than the Department of Corrections. And he expressly concedes that New York's courts entertain even Section 1983 suits against corrections employees *if* the plaintiff asks for injunctive or declaratory relief, or asks for damages but the alleged conduct is ruled – under state law standards – outside the scope of employment. Opp. 6

Finally, the Attorney General admits that New York's law is intended to protect its employees and operations, which he characterizes as minimizing damages claims against state correction employees, preventing their disruptive effect on state prison operations, and substituting New York State as defendant. *Id.* 10. Each is contrary to Congress' choice that people should be able to sue the actual state employees who violate their federal rights.

Thus, it is undisputed that New York's courts generally hear Section 1983 suits, that the challenged state law limits and conditions one specific subcategory of these rights, and that the statute does so in furtherance of state goals inconsistent with Congress'. It is also undisputed that the decision below applies to prisoners and anyone else suing New York's corrections employees from now on, and that such complaints are plentiful and likely to remain so.

In arguing both that this case is not certworthy and that the court below was correct, the Attorney General has had to paint himself into a contradiction. His certworthiness argument is essentially that there is little impact on plaintiffs – their rights are preserved in other ways – but, simultaneously, he argues that the impact for New York is significant – their prison employees and operations are protected from claims. *Both* cannot be true. And they are not.

Nor are the legal principles at issue insignificant. The Attorney General, like the bare majority below, reads "valid excuse" to mean "states can do anything they want if they do it in the guise of jurisdiction." He, and the bare majority below, read the companion concept of "neutral rule" to mean "identical treatment for a small subcategory of federal and state claims" for *any* reason, even to protect the state's employees, operations and purse from the very claims Congress conferred. This *carte blanche* view of state power to reject federal claims which it does not like while opening its courts generally to Section 1983 claims, as well as tort claims, runs aground on this Court's careful explanations of the governing principles in *Howlett* *v. Rose*, 496 U.S. 356 (1990), *Felder v. Casey*, 487 U.S. 131 (1988), and others.

Thus, the Attorney General's opposition only reinforces the importance of resolving the issues raised by the decision below. If those subject to unlawful conduct "under color of state law" in New York, or in similarly inclined states, are fully to enjoy the rights conferred by the United States Constitution and federal laws, this Court's review is critical.

ARGUMENT

1. The Attorney General's position – that the availability of federal courts for vindication of federal rights renders the constitutionality of state restrictions in state courts inconsequential – would have counseled against ever considering the constitutionality of such restrictions. Nonetheless, this Court has repeatedly considered, and often invalidated, these restrictions, even though – in every case – federal courts remained an available alternative forum. *See, e.g., Howlett v. Rose*, 496 U.S. 356 (1990); *Felder v. Casey*, 487 U.S. 131 (1988); *Monessen Southwestern Ry. Co. v. Morgan*, 486 U.S. 330 (1988); *Martinez v. California*, 444 U.S. 277 (1980); *Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1 (1950); *Testa v. Katt*, 330 U.S. 386 (1947); *Herb v. Pitcairn*, 324 U.S. 117 (1945); *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 234 (1934). The Attorney General's assertion that prisoners routinely file Section 1983 claims in federal court, Opp. 2, attests to the abundance of such claims and their statutory exclusion from New York's courts.

2. Likewise, the Court has made clear that a state's substitution of a right fashioned to suit its policies does not render the constitutionality of state

restrictions on federal claims in state courts inconsequential, or free the state from its obligations under the Supremacy Clause, by repeatedly finding such state substitutions or conditions on federal rights unconstitutional. *See, e.g., Howlett v. Rose*, 496 U.S. 356; *Felder v. Casey*, 487 U.S. 131; *Monessen Southwestern Ry. Co. v. Morgan*, 486 U.S. 330; *Martinez v. California*, 444 U.S. 277.

a. To begin with, the Attorney General has mischaracterized the practical impact of New York's displacement of federal law with state law intended to protect the state's corrections employees, prison operations, and coffers.

Congress determined that the availability of damages suits against state employees who wield power unlawfully provides, in itself, a powerful deterrent to such misconduct. *See Wyatt v. Cole*, 504 U.S. 158, 161 (1992). New York's substitution of a Court of Claims action against the State of New York wholly undermines that goal and its value to those subject to abuses of state power. Those guilty of misconduct are not held to account in public and the deterrent value of being brought to court, with all that entails, is lost. Indeed, the acknowledged purpose of the state statute is to protect state corrections employees from the very risks Congress imposed to discourage misconduct.

The substitute state right that the Attorney General relies on is also far less protective of those harmed by misuse of state power than the federal right conferred by Congress. It includes a series of substantive and procedural restrictions aimed at protecting the State from liability in circumstances where federal law *would* impose liability on the state's employees.

For example, Section 1983 has a three-year statute of limitations. New York's substitute state rule has a notice of intent requirement that effectively shortens the limitations period to 90 days. *See* N.Y. Ct. Cl. Act §10(3). In addition, although Section 1983 permits plaintiffs to be awarded punitive damages, New York's substitute right precludes it. *Compare Smith v. Wade*, 461 U.S. 30 (1983), *with Sharapata v. Islip*, 437 N.E.2d 1104, 1105 (N.Y. 1982).

New York's substitute right also precludes awards of attorney fees, in contrast to federal law governing Section 1983 claims, which expressly provides for fee awards. *Compare* 42 U.S.C. §1988 (in a §1983 action, "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs") *with* N.Y. Ct. Cl. Act. §27 ("nor shall counsel or attorney's fees be allowed by the court to any party"). Finally, New York's substitute right precludes jury trial, N.Y. Ct. Cl. Act §12(3), and puts a plaintiff seeking both compensation and injunctive relief to the additional burdens of bringing separate actions in separate courts, *see* N.Y. Ct. Cl. Act §9; *Silverman v. Comptroller*, 339 N.Y.S.2d 149, 150 (N.Y. App. Div. 1972).

Thus, the practical result of the challenged state statute is far from inconsequential for both deterrence of misconduct and compensation to victims.

b. In any event, New York lacks the power to make this substitution. The Supremacy Clause, at the very least, means that states lack the power to override Congress' choice by forcing plaintiffs to resort to a different one. The Attorney General's defense of the statute on the ground that it serves New

York's interest in protecting state employees from most damages suits is at most an explanation, not a constitutionally cognizable valid excuse. *Congress* provided for suits against state employees, including suits for compensatory and punitive damages. "[T]he Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett*, 496 U.S. at 371.

The Attorney General's argument that the New York legislature preferred a different solution than the one Congress devised is necessarily unavailing. "The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all." *Mondou v. New York*, 223 U.S. 1, 57 (1912); *accord Howlett*, 496 U.S. at 371 (confirming *Mondou*'s view); *Felder*, 487 U.S. at 143 ("The decision to subject state [employees] to liability for violations of federal rights, however, was a choice that Congress, not the [State] Legislature, made, and it is a decision that the State has no authority to override.").

c. The Attorney General's characterization of Section 1983 prisoner claims as frivolous and vexatious, Opp. 10, also cannot help him. First, this "justification" does not even fit the statute he is defending, because the challenged statute precludes not only the federal claims the Attorney General dubs "frivolous" – prisoner claims – but also claims by other state corrections employees under Section 1983 or any other applicable federal statute.

Critically, this Court has already rejected this basis for states to decline to hear entire categories of federal claims. *Howlett* explains that although states may adopt neutral rules "to discourage frivolous litigation *of all kinds*," they "may not . . . declar[e] a whole category of federal claims to be frivolous." 496 U.S. at 380. *Accord Felder*, 487 U.S. at 149-50 ("a judgment that factors such as minimizing the diversion of state officials' attention from their duties outweigh the interest in providing claimants ready access to a forum to resolve valid claims . . . is manifestly inconsistent with the central objective of the Reconstruction-Era civil rights statutes", *id.* at 150) (quotations omitted).

The Attorney General's citation to last Term's decision, *Jones v. Bock*, 549 U.S. 199 (2007), Opp. 10, is also unavailing. To the extent *Jones v. Bock* has any bearing at all, it argues against his position. The Court rejected a federal appellate court's implementation of provisions Congress enacted to protect against frivolous prisoner suits because the court had ventured beyond the restrictions Congress authorized. *That* certainly provides no support for the Attorney General's position that a state may venture so far beyond restrictions authorized by Congress as to refuse to hear a subcategory of federal claims Congress expressly provided.

3. The Attorney General's leap from "states are not required to entertain Section 1983 claims" to "states can gerrymander their jurisdiction rules to hear only those subcategories of Section 1983 claims they deem consistent with state policy" is

unsupported and unsupportable. The initial proposition is undisputed but irrelevant. New York's courts of general jurisdiction *are* open to most categories of Section 1983 claims, as well as a full range of analogous tort claims. But there is no basis for the illogical leap the Attorney General needs to defend Correction Law §24.

a. The early and mid-century cases the Attorney General cites do not support his leap. None of them address the critical issue the Attorney General needs to make this leap because none involve a state law that applies narrowly to particular federal and state claims, but not to similar ones. Thus, none counsel that a state may preclude a subcategory of federal claims from courts with jurisdiction over the parties and similar types of cases, because it views permitting such suits as bad policy, *if* it precludes the identical subcategory of state claims.

McKnett and *Mayfield* involved FELA claims brought by non-residents against non-residents arising from events that occurred out-of-state. In both, this Court explained that states are free to deny jurisdiction to non-residents over federal law disputes arising outside their borders, but must do so on the same terms as they deny it to non-residents for out-of-state disputes generally. *Herb v. Pitcairn*, also a FELA case, ruled that a court of geographically limited jurisdiction could refuse to hear a federal case arising outside its geographical purview. The state had courts of general jurisdiction; the plaintiff simply filed in the wrong court. *Testa v. Katt* struck down a state court's refusal to hear a federal claim on the ground that the federal government was a foreign sovereign.

Thus, each of these cases addressed an across-the-board rule, leaving the only question whether the rule was limited to federal claims or not. *McKnett's* and *Testa v. Katt's* were. *Mayfield's* and *Herb v. Pitcairn's* were not. None presented any occasion for this Court to address whether states may apply specific, substantive-policy-based rules to deny jurisdiction to a subcategory of federal (and identical state) claims because they disagree with Congress' policy of providing them.

b. This Court's more recent cases set forth principles that strongly indicate that states do not have this power. *Felder*, *Martinez* and *Monessen Southwestern Railway* rejected application of state rules to federal claims, even though the rules *also* applied to identical state claims. The Attorney General's attempt to distinguish the rulings is premised on the fact that neither involved a rule denominated as jurisdictional.

Howlett, however, specifically addressed this very question and said unequivocally that states cannot substitute their policies for Congress' by framing the vehicle as a rule of jurisdiction. "The fact that a rule is denominated jurisdictional does not provide a court an excuse to avoid the obligation to enforce federal law if the rule does not reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." 496 U.S. at 381. "The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'" *Id.* at 382-83.

Indeed, *Howlett* explained that the statute at issue in *Felder* would have been an equally invalid excuse if it had been jurisdictional. Noting that Wisconsin would otherwise be able to overrule *Felder* "by simply amending its notice of claims statute to provide that no state court would have jurisdiction of an action in which the plaintiff failed to give the required notice. The Supremacy Clause requires more than that." *Id.* at 383.

But New York has done almost exactly that. It removed jurisdiction from its state courts for most actions against state corrections officers and limited jurisdiction for actions based on their conduct to plaintiffs who have given the state-prescribed notice, sued solely the State of New York and limited requested relief to compensatory damages. Moreover, it is undisputed that the courts from which New York removed jurisdiction had power over the parties, who were New York residents, and competence over Section 1983 actions generally.

Indeed, the Attorney General does not even attempt to argue that Correction Law § 24 – which is codified with the state's corrections statutes, not with its judicial administration ones – is motivated by a concern over the parties or subject matter. Rather, he explains that New York's law is intended to minimize damages suits against state correction employees, prevent their disruptive effect on state's prisons, and substitute the State as defendant. Opp. 10. All are manifestly contrary to Congress' intentions, which expressly provided rights of action against the state employees who violate a plaintiffs' rights. The only other goal the Attorney General identifies – "efficient administration of New York's finite judicial resources by channeling this litigation into New York's Court of Claims, which has exclusive jurisdiction to hear" and expertise in adjudicating, damages claims against the State," *Id.* 10-11 – would not even arise if New York did not deny the right Congress conferred in order to substitute a quite different one under state law.

Thus, under the legal framework set forth in *Howlett*, which concededly did not decide a case factually parallel to this one, New York cannot escape its obligation under the Supremacy Clause by gerrymandering jurisdiction in this way. "A State cannot escape this constitutional obligation to enforce the rights and duties validly created . . . by the simple device of removing jurisdiction from courts otherwise competent." *Howlett*, 496 U.S. at 381 (quotations omitted).

4. The Attorney General's failure to see the conflict between Oregon's application of the Supremacy Clause and New York's arises from the same myopia. *Rogers v. Saylor*, 760 P.2d 232 (Or. 1988), did not involve a rule denominated as jurisdictional. It ruled that a state statute capping compensatory damages and prohibiting punitive damages awards against state employees could not be applied constitutionally to Section 1983 claims. The statute, part of the state's tort laws, applied to both federal and state claims against state employees.

As *Howlett* noted about the statute at issue in *Felder*, the Oregon statute can easily be framed as a jurisdictional rule: denying jurisdiction to suits against state employees seeking more than $100,000 per occurrence in compensation or seeking punitive damages. *That statute*, of course, looks much like New York's, which denies jurisdiction to most suits against state corrections employees that seek damages. *Howlett* teaches that there is no distinction between Oregon's statute as enacted and Oregon's statute refashioned as a jurisdictional requirement for purposes of the Supremacy Clause. Moreover, Oregon would have reached the same conclusion if the statute at issue *had* been denominated as jurisdictional, as underscored by *Barcik v. Kubiaczyk*, 895 P.2d 765, 772 (Or. 1995) (finding state jurisdictional rules inapplicable to plaintiff's Section 1983 claims under the Supremacy Clause because they did not reflect concerns of power over the person and competence over the subject matter).

Thus, Oregon and New York have, in fact, reached conflicting conclusions in applying the Supremacy Clause to whether such state rules may constitutionally govern federal claims.

CONCLUSION

The petition for a writ of *certiorari* should be granted.

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Dated: May 22, 2008

No. 07-10374

In the
Supreme Court of the United States

KEITH HAYWOOD,

Petitioner,

v.

CURTIS DROWN, *et al.*,

Respondents.

CERTIFICATE OF SERVICE

I, Jason E. Murtagh, a member of the Bar of this Court, certify that on May 22, 2008, I caused one copy of Petitioner's Reply Brief in Support of a Petition for a Writ of *Certiorari* to be served by Federal Express on counsel listed below. 28 U.S.C. § 2403(b) may apply and the Attorney General of New York was served in his capacity as counsel for respondents. I further certify that all parties required to be served have been served.

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REPLY
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Respondents.

On Writ of *Certiorari*
to the New York Court of Appeals

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REPLY BRIEF

At the outset, two red herrings repeatedly pressed by New York's Attorney General should be set aside. First, the challenged law does not allocate *which* state court hears damages claims against state corrections employees for official conduct. The law closes *all* courts to such claims (unless brought by New York's Attorney General). *See* N.Y. Correct. Law §24(1) ("No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department . . . ."); *cf.* New York Attorney General's Brief 8 [hereinafter "NYAG Br."].

Second, whether states generally may structure their judicial systems and whether state courts must entertain federal claims "in all instances" are not at issue here. *Cf.* NYAG Br. 13-14, 22. New York chose to structure its judicial system to include courts with the power to hear tort claims generally, and claims against state employees for unlawful conduct specifically, including §1983 claims. This is not disputed. New York's Attorney General admits that the state's supreme courts may hear most §1983 claims – including even §1983 claims against state corrections employees for declaratory or injunctive relief, §1983 damages claims against corrections employees for conduct deemed outside the scope of their employment, and legal challenges to prison discipline. *Id.* at 37-38, 19 n.9.

The *actual* issue here is whether a state – after it has provided courts with jurisdiction over analogous cases – is permitted, under the rubric of specialized jurisdictional exceptions, to reshape and avoid those specific federal claims that it considers bad policy.

To defend the state's law, New York's Attorney General must show: 1) that states may do *anything* as long as they call it jurisdiction – which he both claims and contradicts; 2) that section 24 is not contrary to federal law in purpose and effect; or that 3) the Supremacy Clause requires only that when states use jurisdictional rules to pursue targeted substantive policies contrary to Congress', the rules must apply equally to state and federal claims. This Court's teachings for more than a century, and the express provisions of the state and federal statutes at issue, preclude him from doing so. New York's attempt to protect some of its employees from suits Congress expressly authorizes is manifestly unconstitutional.

I. STATES' POWER OVER THEIR COURTS' JURISDICTION IS NOT ABSOLUTE.

A. The Precedent Relied on Recognizes Limits on State Power.

The New York Attorney General's quotations of shreds of general language out of context cannot change this Court's long-standing recognition that the Supremacy Clause limits states' exercise of their residuary sovereignty. Even the opinions he cites to support his claim of unconditional state power expressly confirm such limits, both generally and specifically with respect to state court systems.

For example, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 802 (1995), emphasizes that states retain sovereign authority *"only to the extent that the Constitution has not divested them of their original powers"* (quotation marks omitted). In concurring, Justice Kennedy stresses that "national citizenship has privileges and immunities protected from state abridgment by the force of the Constitution itself." *Id.* at 842 (Kennedy, J., concurring) (noting also that policy arguments for the state's rules are irrelevant, because the issue "is not the efficacy of those measures but whether they have a legitimate source," *id.* at 845).

Likewise, *Gregory v. Ashcroft* notes that in this country's dual sovereignty "[t]he Federal Government holds a decided advantage in this delicate balance: the Supremacy Clause" and that even "[t]he authority of the people of the States to determine the qualifications of their government officials is, of course, not without limit." 501 U.S. 452, 460, 463 (1991). Moreover, the Court notes that the balance tilts even further to the federal government "when Congress acts pursuant to its powers to enforce the Civil War Amendments," as it did in enacting §1983, because "[b]y its terms, the Fourteenth Amendment contemplates interference with state authority." *Id.* at 468. *Tafflin v. Levitt* also emphasizes that state sovereignty is "subject" to the "limitations imposed by the Supremacy Clause." 493 U.S. 455, 458 (1990).

No special exemption is carved out for state rules governing state judicial systems. For example, *Alden v. Maine* – although ruling that the constitutional limits on Congress' power to require federal courts to hear particular claims also govern its power to entrust such claims to state courts – makes clear that "Congress *may* require state courts to hear . . . matters appropriate for the [federal] judicial power." 527 U.S. 706, 754 (1999) (emphasis added) (quotation marks omitted). *Alden* further notes that state sovereign immunity does not bar suits, even for money damages, against state officers in their individual capacities. *Id.* at 757.

Similarly, although New York's Attorney General quotes only the fragment of *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers* noting that states retained power over their judicial systems, the decision expressly states that such retained powers remain "restrained by 'the supreme Law of the Land' as expressed in the Constitution, laws, or treaties of the United States." 398 U.S. 281, 285 (1970); *see also Missouri ex. rel. St. Louis, B. & M. Ry. Co. v. Taylor*, 266 U.S. 200, 209 (1924) ("No peculiarity of state procedure will be permitted to enlarge or to abridge a substantive federal right.").

This Court has also long recognized that the Supremacy Clause limits state power over similarly innately sovereign activities. *See, e.g., Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 695 (1979) (ruling that federal law may compel state agency to take certain actions "even if state law withholds from [it] the power to do so"). Only last Term, this Court ruled that a state's power over how its own money is spent is not unfettered. *Chamber of Commerce v. Brown* found such a statute invalid because it furthered policies inconsistent with Congress'. ___ U.S. ___, 128 S. Ct.

2408 (2008).

B. Further, the Absolute Power Argument Proves Too Much.

If state power over the jurisdiction of its courts were in fact absolute, this Court would not have invalidated *any* state court determinations with respect to their own jurisdiction. Yet this Court has repeatedly found such rulings invalid on the ground that the offending restrictions were contrary to the Supremacy Clause. *See, e.g., Howlett v. Rose*, 496 U.S. 356, 381 (1990) (finding "no merit" in the contention that "a federal court has no power to compel a state court to entertain a claim over which the state court has no jurisdiction as a matter of state law" and ruling that Florida could not escape its constitutional obligation to enforce a §1983 claim when its jurisdictional restriction was neither uniform nor unrelated to the substance of the claim); *Testa v. Katt*, 330 U.S. 386, 389 (1947) (ruling that a state restriction on its courts' jurisdiction over a federal claim was invalid); *McKnett v. St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 233 (1934) ("The power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution."); *Mondou v. New York, N.H. & H. R.R. Co.*, 223 U.S. 1 (1912) (reversing the highest state court's determination that Connecticut courts lacked jurisdiction over a federal claim); *see also Johnson v. Fankell*, 520 U.S. 911 (1997) (reconfirming the Constitution's limits on a state's power to structure its courts' jurisdiction, but upholding a state rule that was uniformly applied to almost all cases and was outcome-neutral).

The "absolute state power" argument, therefore, "proves too much." *Richlin Sec. Serv. Co. v. Chertoff*, ___ U.S. ___, 128 S. Ct. 2007, 2018 (2008). New York's Attorney General, not surprisingly, contradicts his own argument throughout, without observing the inconsistencies. He concedes that labeling a rule jurisdictional does not permit states to avoid the obligation to enforce federal law if the rule does not reflect the type of concerns of power over the person and competence over the subject matter that neutral jurisdictional rules are designed to protect. NYAG Br. 17 (quoting *Howlett* as correctly stating the law). Just pages later, he acknowledges that "[a] state's authority over the jurisdiction of state courts is not unfettered by the federal Constitution" and that "a state cannot avoid its constitutional obligations by the simple device of removing jurisdiction from courts otherwise competent." *Id.* at 22 (quotation marks omitted). And throughout, he concedes that states have no power to decline state court jurisdiction over federal claims that are analogous to the claims they do hear. *Id.* at 10, 23, 25, 30. In addition, his entire "clear statement" argument is premised on Congress' power to override states' power to structure their judicial systems. *Id.* at 39-44.

II. THE "CLEAR STATEMENT" PRINCIPLE DOES NOT APPLY HERE.

Understandably lacking faith in the argument that states can shield their laws in a magic cloak of invisibility from the Supremacy Clause by denominating them as jurisdictional, New York's Attorney General alternatively attempts to constrict the impact of the Supremacy Clause. One version is discussed *infra*, pp. 23-31. The other is his argument that New York can selectively withdraw jurisdiction from federal claims it finds objectionable *unless* Congress has clearly stated its intention to override this alleged "power." But the clear statement principle has no application here.

A. Congress *Has* Overridden Any State's Objections to Suits Against its Employees in State Court.

This Court has applied the clear statement principle only when it *cannot* be presumed that Congress intended to override a state's historic power. Almost entirely, the rulings involve whether Congress overrode a state's determination as to when and how it may be sued. *See, e.g., Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 543 (2002) (applying the principle to whether "federal law [] extend[s] the time period in which a state sovereign is amenable to suit in its own courts"); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (applying the clear statement principle to whether Congress intended to subject states to suit in their own courts); *Green v. Mansour*, 474 U.S. 64 (1985) (applying the clear statement principle to whether Congress intended to permit suits against states for notice relief); *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242-43 (1985) (applying the clear statement principle to whether Congress intended to subject states to suit in federal courts).

When *Gregory v. Ashcroft* applied the principle outside that context – to whether a federal non-discrimination law preempted a state law establishing a qualification for state judges – it did so because Congress had provided for the law not to apply to most of a state's important public officials, which suggested that Congress' intention to reach state judges could not be presumed. 501 U.S. at 470.

Here, as New York's Attorney General acknowledges, there is a longstanding presumption that Congress has provided for state courts to hear federal claims unless Congress expressly provides for exclusive federal jurisdiction. *See, e.g.*, *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981) ("the Court begins with the presumption that state courts enjoy concurrent jurisdiction" over federal claims); *Tafflin*, 493 U.S. at 469-70 (Scalia, J., concurring) (because "the laws of the United States are laws in the several States, . . . [i]t [] takes an affirmative act of power under the Supremacy Clause to oust the States of jurisdiction"); NYAG Br. 23, 28.

Congress is therefore presumed to have provided for state courts to hear §1983 claims. *See Will*, 491 U.S. at 66. In §1983, Congress also provided for "every person" – including state corrections employees – to be subject to actions at law or in equity for any conduct undertaken "under color of" law that violates federal law. 42 U.S.C. §1983. No other provision of §1983 suggests any ambiguity about Congress' inclusion of damages actions and state corrections employees. *Id.*

Thus, the clear statement principle does not require Congress to specify that states may not close their courts to those parts of §1983 they find objectionable, just as it does not require Congress to specify that states may not directly immunize their employees or alter the relief available.

Requiring Congress to anticipate each and every method a state might employ to secede from the union, one rule at a time, would be to impose a "please don't eat the daisies" standard. The Supremacy Clause relieves Congress of such impossible tasks. When Congress has conferred rights, states are not free to use their ordinarily available powers to reject Congress' choices.

B. Section 24 Is Not an Exercise of New York's Historic Power to Structure its Judicial System.

New York's Attorney General is incorrect that section 24 was enacted pursuant to New York's historic power to structure its judicial system. New York acted pursuant to *that* power when it provided courts with jurisdiction over New York residents, including the parties here, and competence over tort suits. New York has even specifically provided courts with competence over all types of claims against most state employees for unlawful conduct; with competence over claims for declaratory and injunctive relief against even corrections employees for unlawful conduct; with competence over damages claims against corrections employees for unlawful conduct *if* outside the scope of their employment; and with competence over any type of claim against corrections employees for unlawful conduct if brought by New York's Attorney General.

Thus, in structuring its judicial system, New York chose to provide courts to determine whether defendants acted wrongfully and to require them to pay damages to their victims, including state employee defendants acting within the scope of their employment. Claims about whether particular state employees violated the rights of New York residents, whether damages are due, and what amount is due, are part of these courts' ordinary docket.

The challenged state law is a targeted withdrawal of jurisdiction that New York *does* provide from specific claims New York views as ill-advised. But states have *no* historic power to second-guess that determination when Congress has made it. *See Chamber of Commerce*, 128 S. Ct. at 2417 ("the States have no [ ] authority . . . to upset the balance that Congress has struck").

Chamber of Commerce reconfirms the fundamental principle that state law based on and advancing a policy judgment inconsistent with Congress' is invalid. *Id.* at 2418. And critically, it reconfirms this key principle in the context of a type of law that *otherwise* would have fallen squarely within the state's historic power – a law governing how state-conferred grants are spent. The state law was nonetheless ruled invalid because the Court inferred a purpose and impact inconsistent with one of Congress' choices about unionization issues.

The question of whether Congress clearly stated its intention to override a historic state power, therefore, is not presented. New York had no historic power to overrule congressional policy based on its own contrary policy and interest. That right "never existed, and the question [of] whether it has been surrendered, cannot arise." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 430 (1819).

III. SECTION 24 – IN PURPOSE, TEXT, AND EFFECT – SHIELDS PRISON WORKERS FROM SUITS CONGRESS AUTHORIZES.

In the absence of state power to insulate any law denominated jurisdictional from scrutiny, or to invoke protection under the clear statement principle, it is necessary to determine whether section 24's purpose and effect conflict with federal law. *See Chamber of Commerce*, 128 S. Ct. at 2414. The statute's text, its history, the New York Attorney General's own defense of the State's policies, and his acknowledgements as to how the statute operates unequivocally demonstrate that it does conflict.

A. Section 24's Undisputed Purpose is to Protect State Corrections Employees From Specific Claims and Remedies.

Although New York's Attorney General vaguely suggests that the statute reflects only the ordinary concerns of judicial administration, he soon abandons that position to contend that New York correctly weighed the policy issues. Both arguments necessarily fail. The first is nonsensical on its face. The second is beside the point. Congress weighed these policy issues differently.

1. Section 24 cannot be explained as a law about judicial administration.

Section 24 is not codified with New York's laws governing judicial administration; it is codified with the State's substantive laws governing its corrections system – which New York's Attorney General has not denied. He also does not suggest that the state legislature's interest was *solely* in organizing its judicial system, and unrelated to the substance of the specific claims at issue. But even his suggestions that the state legislature was motivated at all by judicial administration concerns is irreconcilable with the actual statute and the judicial system New York has structured.

Section 24 does not plausibly reflect New York's alleged interest in having a special court with expertise on the subject matter decide cases requiring that expertise. *Cf.* NYAG Br. 9, 19. First, such expertise – on unlawful conduct, on personal liability for damages and amount of damages, as well as on unlawful conduct by state employees, including state corrections employees – is necessarily found in the New York's supreme courts because they have jurisdiction to hear *most* of these cases. Second, section 24 did not direct these claims to a special court. It closed its courts to all such claims, and offered a carefully-tailored state law substitute reflecting New York's weighing of the competing substantive interests, rather than Congress'.

Section 24 also was not plausibly enacted to avoid uneven geographic distribution of lawsuits in venues where prisons are located. *Cf.* NYAG Br. 19.

New York permits many prison-related suits that would be equally unevenly distributed, including challenges to prison discipline decisions. *See* N.Y. Correct. Law §24(1); NYAG Br. 36 & 19 n.9. In addition, no factual basis is offered to support this alleged "problem," and the late-asserted claim that this underlies the statute is in stark contrast to the legislative history of the statute and its predecessors, which focus on providing immunity or indemnity to state corrections employees.

Furthermore, closing all state courts to damages suits against state corrections employees for conduct within the scope of their employment is not a generally applicable rule addressing uneven distribution of cases of all kinds, which *would* be within New York's power. It is a targeted exclusion aimed at disfavored claims. Neutral solutions to this alleged judicial administrative problem might include, for example, providing more courtrooms and judges in areas with higher caseloads overall or enacting generally applicable venue or transfer rules for handling peak periods. But New York's response is far from neutral.

Finally, section 24 cannot be upheld as a neutral rule of judicial administration aimed at the "burden" of frivolous suits. *Cf.* NYAG Br. 18-19. This Court has repeatedly ruled that neutral rules for this purpose must be generally applicable, not targeted at specific categories of claims. *See, e.g., Howlett*, 496 U.S. at 380 (the argument "that §1983 actions are more likely to be frivolous than are other suits . . . clearly cannot provide sufficient justification for the State's refusal to entertain such actions" (quotation marks omitted)); *Felder v. Casey*, 487 U.S. 131, 189 (1988) (rules designed to "sift out specious claims" that apply only to state defendants are "inconsistent with the aims of the federal legislation" (quotation marks omitted)); *Burnett v. Grattan*, 468 U.S. 42, 54, 55 (1984) (rules aimed at avoiding "the diversion of state officials' attention from their duties" by an "endless stream of unfounded" suits is "manifestly inconsistent with the central objective" of §1983).

The fact that Congress has placed some restrictions on §1983 suits by prisoners also cannot help section 24. New York's Attorney General does not even attempt to argue that New York's statute simply adopts for New York the same rules that Congress adopted for federal courts. And New York has *no* power to impose entirely different and more far-reaching burdens on a federal right.

2. Section 24's purpose is to protect state prison employees and prisons.

New York's Attorney General concedes that section 24 reflects the State's "interest in sound prison administration" – a substantive interest unrelated to judicial administration. NYAG Br. 20. New York has decided that this interest is not served by permitting a right of action Congress conferred – whether brought by prisoners, visitors or corrections employees. But the contention that New York's policy is better is unavailing. *See, e.g.*, *Felder*, 487 U.S. at 143 (emphasizing that "however understandable or laudable the State's interest," it may not constitutionally displace "the goals of the federal legislation").

There is no question that New York's policy choices are different from, and in conflict with, Congress'. Congress provided state employees with *qualified* immunity from suit. *See Hope v. Pelzer*, 536 U.S. 730, 739 (2002). New York's law makes state corrections employees *absolutely* immune from damages suits for official conduct in the State's courts. *See* N.Y. Correct. Law §24(1).

New York chose to offer a substitute claim instead that can be brought only against the State and is subject to various state law restrictions. *Id.*; NYAG Br. 19. Congress chose to permit claims directly against state employees in their personal capacities. 42 U.S.C. §1983. As this Court has long recognized, Congress intended §1983 not only to provide a right to compensation for violations, but also "to serve as a deterrent against future constitutional deprivations." *Owen v. City of Independence*, 445 U.S. 622, 651 (1980); *accord Richardson v. McKnight*, 521 U.S. 399, 403 (1997).

Had Congress agreed with New York that substituting states as defendants would be just as or more effective, it could have offered states the choice of immunizing their employees to the extent they were willing to consent to being sued directly. But Congress' weighing of the competing interests has not led it to provide states with that choice. As a result, the New York Attorney General's position that New York's *different* choice is just as good or better is unavailing.[1]

Moreover, even he contradicts that contention by conceding that damages suits brought directly against individual state employees *do* have an impact, despite a state's offer to defend and indemnify them. NYAG Br. 21 (noting that damages claims can "inhibit" the conduct of employees). New York's Attorney General assumes that all such claims are frivolous and all such conduct lawful and therefore permitting these claims would inhibit only legitimate prison operations. But Congress found otherwise. The ***inhibition*** New York wants to avoid under any circumstances is precisely what Congress relies on to deter future violations.

The New York Attorney General is also mistaken that New York's willingness to permit most §1983 actions against state employees in its courts – and some such actions against state corrections employees – vitiates the State's hostility to the category of federal actions it shuts out. To the contrary, it only demonstrates that the State's hostility is directed to only a certain subcategory of §1983 claims rather than to all of them. New York's purpose, with respect to the claims it excludes, is still irreconcilable with Congress'.

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[1] His suggestion that New York's Court of Claims might accept federal claims against the State if Congress had chosen to confer a right under §1983 to sue States themselves for their employees' violations of federal rights, and that it is not New York's fault that Congress did not, NYAG Br. 35 & n.15, misunderstands the issue. New York scarcely has the power to confine Congress' choices because it thinks it has a better idea. *See, e.g., Mondou*, 223 U.S. at 57

Indeed, unlike California in *Chamber of Commerce*, New York does not even claim that its rule is an attempt to further Congress' goals. *Cf.* 128 S. Ct. at 2414. New York's law is aimed at its own view of "sound prison administration." Section 1983 is aimed at restraining state employees from unlawful conduct – regardless of state policies or practices – by allowing individuals to sue state employees personally.

B. It is Undisputed that Section 24's Effect is to Close New York Courts to Rights Congress Conferred.

By its terms, the "real effect" of the challenged state law is to impede Congress' purposes by selectively closing state courts to specific rights conferred in §1983. *Livadas v. Bradshaw*, 512 U.S. 107, 119 (1994). This effect is not subtle. New York has not made it less likely that claimants will succeed. It has not made it more expensive to succeed. It has locked these claimants out and padlocked the door – precisely *because* they have chosen to bring these federally-conferred claims.

New York's Attorney General does not, as he cannot, argue differently. Thus again, this case presents a much easier question than was presented in *Chamber of Commerce* because the effect of section 24 – to render state corrections employees entirely immune from §1983 damages actions for official conduct in the State's courts – is undisputed.

Instead, New York's Attorney General argues that cobbling the state's substitute claim with the remains of §1983 that New York permits is *just as good*. NYAG Br. at 36-38. The fact that Congress did not think so should end this inquiry. In any event, the burdens imposed by New York's cobbled alternative are readily identified.

In addition, New York's Attorney General appears embarrassed by the fact that section 24 also reaches suits by corrections employees (and visitors to corrections institutions, which he does not mention), because he cannot offer *any* policy argument for that. NYAG Br. 18. Nonetheless, his concession underscores that the challenged law burdens the federal rights of prison employees and visitors for, apparently, no reason at all.

1. The "permitted" claims

Any suggestion that the §1983 actions for declaratory or injunctive relief that New York permits are sufficient to fully accomplish Congress' deterrent and compensatory purposes defies centuries of experience. NYAG Br. 36-38. If actions in equity were adequate to protect against misconduct, there would be no need for actions at law. There would also have been no reason to replace separate courts of law and equity with courts that could hear claimants' injunctive and damages claims in the same proceedings.

New York's Attorney General cannot derive support from *Green v. Mansour*. *Green v. Mansour* did not suggest that injunctive relief was good enough when Congress acted within its powers to provide a right to damages as well. It ruled that compensatory interests were not sufficient to overcome the Eleventh Amendment, which imposes *limits* on Congress' powers. 474 U.S. at 68.

The damages actions New York *does* permit against its corrections employees – those alleging conduct outside the scope of their employment and not in the discharge of their duties – are also woefully insufficient. *Cf.* NYAG Br. 37-38. Section 1983 only reaches conduct "under color of" state law. By excluding suits alleging conduct deemed within the scope of their employment and in the discharge of their duties, New York closed its courts to many, perhaps most, §1983 damages claims against these state employees – *unless* New York also classifies all conduct that violates federal law as outside that scope. It is undisputed that New York does not do so. Thus, the damages actions section 24 permits against state corrections employees are necessarily insufficient to fully accomplish Congress' goals.

2. The substitute state damages claim

New York's Attorney General admits that each of the restrictions Haywood identified is imposed by the State's substitute claim. NYAG Br. 4-5, 36-38; *see* Haywood Opening Br. 9-11. Each fosters results opposite to those Congress intended.

First, because these damages actions can be brought only against the State, NYAG Br. 4, they forfeit the deterrent effect that Congress intended the prospect of suit to have on would-be and former violators. New York's Attorney General concedes that suing employees directly – even if the state defends and indemnifies them – can still "inhibit" their conduct. NYAG Br. 21-22.

And his counter that damages actions against states themselves "may be most effective . . . given a state's ability to prevent future violations by training and disciplining its employees," NYAG Br. 20-21, disregards precisely why Congress provided §1983 rights in the first place. States were *not* training and disciplining their employees to follow federal law; some were affirmatively resisting. *See, e.g., Patsy v. Bd. of Regents*, 457 U.S. 496, 503-05 (1982). In any event, leaving compliance to the cost-benefit analysis applicable at the scale of state treasuries, reputations, and litigation obligations is far less likely to be effective than placing individuals in the line of legal fire for their own conduct.

Second, New York's 90-day notice requirement precludes many more actions, including meritorious ones, than the 3-year limitations period applicable in New York to §1983 suits. NYAG Br. 4; Haywood Opening Br. 10. This notice requirement is one month *shorter* than the notice requirement *Felder* found unconstitutionally burdensome. *See Felder*, 487 U.S. at 151 (finding that a 120-day notice requirement "so interferes with and frustrates the substantive right Congress created that, under the Supremacy Clause, it must yield to the federal interest"); *id.* at 155-56 & n.3 (White, J., concurring) (explaining the state's notice requirement).

Third, by precluding the award of attorney fees to successful claimants available in §1983 suits, New York discourages and generally precludes most damages claims, including meritorious ones. NYAG Br. 4, 36; Haywood Opening Br. 10. Indeed, Congress provided for attorney fee awards to *facilitate* access. *See Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) ("The purpose of §1988 is to ensure 'effective access to the judicial process' for persons with civil rights grievances." (quoting H.R. Rep. No. 94-1558, at 1 (1976))).

New York not only precludes claimants from receiving attorney fee awards but also places them at risk of being held liable for the State's expenses and fees if their claims are deemed frivolous. *See* N.Y. Ct. Cl. Act §27 (permitting some attorney fees, including those under N.Y. C.P.L.R. 8303-a, which permits cost and fee awards if a claim is frivolous).

Fourth, by precluding punitive damages New York denies a remedy, available under §1983 to all claimants, that is aimed at appreciably increasing the deterrent effect of successful suits. NYAG Br. 4; Haywood Opening Br. 10-11.

Fifth, by precluding injunctive relief in its Court of Claims, New York burdens claimants who seek both damages and injunctive relief by requiring them to press separate actions in separate courts – suing the State for damages in New York's Court of Claims and suing the violators in a New York supreme court, in order to obtain complete relief. NYAG Br. 4, 36; Haywood Opening Br. 11.

Sixth, New York's denial of a right to jury trial for its substitute claim – and all suits against the State – when jury trials are ordinarily available to New York claimants, is plainly intended to protect the State from liability. It therefore burdens claimants who are required to seek damages from the State itself. NYAG Br. 4, 36; Haywood Opening Br. 11. New York's Attorney General is certainly correct that states have no obligation under the Seventh Amendment to provide a right to jury trial. But New York *has* provided a right to jury trial to its litigants generally. Tort claimants have that right. Section 1983 claimants seeking damages against other state employees have that right. Section 1983 claimants seeking injunctive relief against corrections employees, or damages for conduct outside the scope of their employment, have that right. *See* N.Y. Const. art. 1, §2; N.Y. C.P.L.R. 4101. New York's decision to provide that right for virtually every action *except* those seeking damages from the State evidences an expectation that judges will protect it from liability better than juries would.

These special rules narrow the remedy New York's Attorney General flogs as a just-as-good substitute for the rights Congress conferred, and thereby tilt the scale to protect the State at the expense of claimants. They demonstrate interests – and effects – inconsistent with Congress' goals of compensating and deterring unlawful official conduct by state employees.

C. The Supremacy Clause Requires More than Surgically Precise Equal Access for Federal Claims.

The New York Attorney General's contention that section 24 is constitutional because its impact on federal rights is based on state policy, not their "federal source," is wholly unsupported by this Court's jurisprudence. NYAG Br. 10, 38-39. It is urged as a special rule applicable to state jurisdictional rules, but this Court has never ruled or stated that states have *carte blanche* to selectively withdraw jurisdiction from federal claims they find objectionable so long as they tweeze out the identical subcategory of state law claims at the same time. *Cf.* NYAG Br. 32-33. States have no more power to subvert federal policy than to discriminate against federal law *because* it is not their own.

This Court has not ruled on this particular question before. However, the Court's reasoning in deciding the validity of state jurisdictional rules is irreconcilable with the New York Attorney General's contention. Indeed, the contention is irreconcilable with the fundamental tenet of Supremacy Clause jurisprudence, that states may not reject Congress' constitutionally-enacted choices because they disagree with Congress' policy. *See, e.g.*, *Chamber of Commerce*, 128 S. Ct. at 2414; *Howlett*, 496 U.S. at 371; *Mondou*, 223 U.S. at 57.

1. This Court has articulated a very different, and broader, limit.

In evaluating state jurisdiction rules, the Court has stressed that state courts are competent to hear federal claims if they hear *analogous* cases. It has never suggested that jurisdiction over precisely identical cases is all that is required.

For example, the Alabama rule held unconstitutional in *McKnett* precluded its state courts from hearing claims by a non-resident against a foreign corporation unless the cause of action arose within the state. 292 U.S. at 231. That restriction did not discriminate between Alabama and federal claims. Alabama's courts had long lacked jurisdiction over any claims by a non-resident plaintiff against a foreign corporation that arose outside the state, but had later made an exception for claims arising under the laws of other states. *Id.*

This Court nonetheless considered the state courts' jurisdiction over "the class of actions to which that here brought belongs, in cases between litigants situated like those in the case at bar." *Id.* at 232. Because these courts had general jurisdiction of accident claims, and would have had jurisdiction if the accident had occurred in Alabama, if the defendant had been an Alabama corporation, or if the claim were brought for an injury suffered while engaged in intrastate commerce, the Court ruled that the rule could not be applied to preclude a FELA claim. *Id.* at 232-33.

The Rhode Island rule held unconstitutional in *Testa v. Katt* denied jurisdiction because the Emergency Price Control Act permitted suits for treble damages. 330 U.S. at 388. This Court found the state's jurisdictional rule unconstitutional because state courts heard the same "type" of claim arising under state law – that is, on related subjects rather than on price control violations – and also heard federal labor law claims for double relief. *Id.* at 394. In *Testa v. Katt*, the suspect rules had been framed as applying only to claims under "foreign" laws. But Rhode Island does not appear to have permitted precisely identical claims, hence the Court's recourse to related types of claims. The Court considered the state courts' general jurisdiction over tort and other civil claims and the fact that they heard claims involving *similar* subject matter and relief.

The same understanding informs this Court's choice of which state statute of limitations period to incorporate as the federal limitations period. The Court chose the state's statute of limitations for all personal injury claims, explaining that these broadly applicable rules were chosen because of "the federal interest in ensuring that the borrowed period of limitations not discriminate against the federal civil rights remedy." *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). Had the Court chosen state statutes of limitations for the identical, or even most similar, claim, states would be left with ample opportunity to discriminate as New York has here.

Furthermore, this Court has discussed at length *where* the line is properly drawn between those state jurisdictional rules that may constitutionally be applied to federal claims and those that may not. Both *Howlett* and *Johnson* defined permissible jurisdictional rules as generally applicable rules adopted to further concerns about jurisdictional issues, not specific substantive claims.

The examples provided by *Howlett* are instructive: jurisdiction denied over out-of-state parties, events outside the geographical power of the court, and disputes for which the state is an inconvenient forum. 496 U.S. at 374-75. None involved targeted preclusions aimed at particular substantive claims.

Howlett's further clarification is definitive. *Howlett* explains that the notice requirement *Felder* invalidated would not be valid *even* if it were amended "to provide that no state court would have jurisdiction of an action in which the plaintiff failed to give the required notice." 496 U.S. at 383. The *Felder* notice requirement applied equally to state and federal claims. *Felder*, 487 U.S. at 134, 152.

Amending it to become a jurisdictional rule would have produced a far broader withdrawal of jurisdiction than New York has enacted, because it would have applied to all suits against state entities or officers. *Id.* at 134. Yet this Court explained that the "force of the Supremacy Clause is not so weak that it can be evaded" by enacting withdrawals of jurisdiction applicable to both state and federal claims to further state policies at odds with Congress'. *Howlett*, 496 U.S. at 382-83.

Johnson expressly confirmed the line drawn by *Howlett*, 520 U.S. at 918-19, and applied it. The Idaho jurisdictional rule at issue applied equally to both identical federal and state claims – and to many others – but this Court never suggested that that alone would be sufficient to pass Supremacy Clause muster. Rather, the Court's bases for upholding the application of the Idaho rule to federal claims were that: 1) it arose solely from judicial administration concerns – the extent to which interlocutory appeals rather than final appeals were available; 2) it did not target civil rights claims against the state but was generally applicable; 3) it did not protect state entities or employees from a substantive right provided by federal law but worked, if at all, against the state's own employees by requiring them to wait longer to vindicate a valid qualified immunity claim; and 4) it would not result in different outcomes depending on whether the claim was brought in federal or state court. *Id.* at 918 & n.9, 919-21. Throughout, *Johnson* relied on *Felder*'s analysis.[2]

The same analysis demonstrates the clear invalidity of section 24. The courts' jurisdiction over virtually all similar cases is admitted. They have general jurisdiction over torts and other civil claims. They hear §1983 and similar state law claims against other state employees. They hear §1983 and similar state law claims for injunctive relief against state *corrections* employees. These courts even hear §1983 and similar state law claims for damages against state corrections employees *if* the liability at issue involves conduct deemed outside the scope of their employment. And they hear all claims against state corrections employees *if* brought by the New

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[2] Contrary to New York's Attorney General, NYAG Br. 32-33, *Felder* is *not* an abandoned island in the law. Its reasoning was expressly reconfirmed by both *Howlett* and *Johnson*.

York Attorney General.

New York's courts thus have ample competence over the subject matter of damages suits against state corrections employees for unlawful conduct because they have the power to hear the same complaints about the same conduct by the same defendants *if* they had been brought by a different claimant or asked for different relief, and the power to hear every manner of related claim. Section 24 has nothing to do with neutral allocations of judicial resources; it furthers the State's policy that damages should not be available against *these* particular state employees – regardless of contrary federal law.

But the force of the Supremacy Clause, as this Court has long recognized, precludes New York from manipulating its jurisdictional rules to reshape or avoid federal laws with which it disagrees.

2. The proposed standard would eviscerate the Supremacy Clause.

Contrary to New York's Attorney General, mere neutrality between precisely identical state and federal claims would *not* be "sufficient to vindicate Supremacy Clause concerns." NYAG Br. 33. The only distinction between jurisdictional rules that could validly be applied to federal claims under the New York Attorney General's proposed standard and state rules this Court has already ruled invalid is a matter of wording.

Virtually every rule that this Court has found impermissible could be amended as a jurisdictional rule that would pass muster under the New York Attorney General's proposed standard, but still serve precisely the same state interest, with precisely the same impact on federal rights. As *Howlett* explained, Wisconsin could achieve the same result by withdrawing jurisdiction when notice had not been provided as it achieved by imposing the notice requirement that *Felder* invalidated as applied to federal claims. *See Howlett*, 496 U.S. at 382-83.

Likewise, California could obtain the same immunity for state employees involved in parole-release decisions, the rule *Martinez* said could not constitutionally be applied to §1983 claims, by simply withdrawing jurisdiction from suits against these state employees. *See Martinez v. California*, 444 U.S. 277, 280, 284 (1980). And Pennsylvania could impose the damages rules *Monessen* ruled could not be imposed on federal claims, by withdrawing jurisdiction from claims that do not permit prejudgment interest or that seek damage awards based on future value. *See Monessen Sw. Ry. Co. v. Morgan*, 486 U.S. 330, 336, 339-40 (1988).

Each of these state rules was already framed as applying equally to all claims within the specified category. But the New York Attorney General's proposed standard would also insulate amended versions of even some state rules that were not. Under the proposed standard, for example, Rhode Island could salvage the state court ruling that was reversed by *Testa v. Katt* by amending it to withdraw jurisdiction from suits seeking treble (or penal) damages for conduct involving overcharging – or whatever broader category of claims Rhode Island did not itself subject to such damages.

Likewise, Connecticut's objection to enforcing FELA claims contrary to state policy – ruled unconstitutional in *Mondou* – could also readily be accomplished under the proposed standard. Since Connecticut policy was to deny recovery to employees injured during employment by the negligence of fellow employees, 223 U.S. at 49-50, 57, the State could merely amend its rule to withdraw jurisdiction from all employee suits against employers alleging work injuries caused by negligence of another employee. Such a claim-specific jurisdictional exclusion would be comparable to New York's exclusion of private damages suits against state corrections employees alleging conduct within the scope of their employment and in the discharge of their duties. Under the standard urged by New York's Attorney General, Connecticut would have the power to overrule *Mondou* and prevent its courts from enforcing federal law with which it disagreed.

Thus, the standard urged by New York's Attorney General elevates form over substance. It would reduce the Supremacy Clause to a wording requirement, leaving states free to reshape and avoid federal rights at their pleasure, by embodying their policy disputes with Congress in jurisdictional terms.

This Court has never upheld constitutional standards that are so easily circumvented. And *Howlett* expressly disavowed the specific standard urged by New York's Attorney General. Rather, this Court has "often noted [that] constitutional rights would be of little value if they could be indirectly denied." *U.S. Term Limits*, 514 U.S. at 829 (quotation marks omitted). "The Constitution nullifies sophisticated as well as simple-minded modes of infringing on constitutional protections." *Id.* (quotation marks omitted).

U.S. Term Limits ruled a state elections procedure unconstitutional because it was "an indirect attempt to accomplish what the Constitution prohibits Arkansas from accomplishing directly." *Id.* Arkansas *had* a constitutionally recognized power to enact election procedures, but the Court explains that this power entitled it only "to adopt generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself." *Id.* at 834 (quotation marks omitted).

Just last Term, *Chamber of Commerce* reconfirmed the longstanding principle that states "may not indirectly regulate" conduct that they "could not directly regulate." 128 S. Ct. at 2415. Notwithstanding the state's power to enact a *neutral* requirement on how its own funds can be spent, the Court found that California had imposed "a targeted negative restriction" contrary to congressional policy, which is not permissible. *Id.* New York's section 24 crosses exactly the same line, by gerrymandering its courts' jurisdiction to deny enforcement of federal claims it views as bad policy.

CONCLUSION

For the reasons stated above, the judgment and opinion of the New York Court of Appeals should be reversed.

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AMICUS
CURIAE
BRIEF

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No. 07-10374

In the Supreme Court of the United States

KEITH HAYWOOD,
Petitioner,

v.

CURTIS DROWN, ET AL.
Respondents.

On Petition for Writ of Certiorari
To the New York Court of Appeals

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICI CURIAE[1]

Prisoners' Legal Services of New York (PLS), a not-for-profit organization providing civil legal services to indigent inmates in New York State prisons, has been providing legal assistance to inmates for thirty-one years. PLS receives over 10,000 requests for assistance annually and serves as legal counsel to inmates on a variety of claims in the state and federal courts, including claims of excessive force, deliberate indifference and violations of due process. There are approximately 63,000 individuals in New York State prisons. PLS has a significant interest in insuring that they have the same opportunity to have their claims of constitutional wrongs adjudicated by state or federal courts, as other individuals in New York State.

The Legal Aid Society, a private, non-profit organization, has provided free legal assistance to indigent persons in New York City for over 125 years. Through its Prisoners' Rights Project, the Society seeks to ensure that prisoners are afforded full protection of their legal rights. The Society advocates on behalf of prisoners in New York state prisons and New York City jails, and where necessary, conducts class action litigation relating to prison conditions and mistreatment of, and violence against, prisoners.

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[1] The parties' letter of consent to the filing of this brief has been lodged with the Clerk. Under Rule 37.6 of the Rules of the Court, *amicus curiae* states that no counsel for a party has written this brief in whole or in part and that no person or entity, other than *amicus curiae*, has made a monetary contribution to the preparation and submission of the brief.

The New York State Defenders Association (NYSDA) is a not-for-profit membership association of more than 1,500 public defenders, legal aid attorneys, 18-B counsel, private practitioners and others throughout the state. With funds provided by the State of New York, NYSDA operates the Public Defense Backup Center, offering legal consultation, research, and training to more than 5,000 lawyers who serve as public defense counsel in criminal cases in New York. Many of the clients of the public defense attorneys that are supported by NYSDA have been sentenced to incarceration in state prison. These individuals should have recourse to litigate federal civil rights claims in state supreme court when they have been victimized in prison.

Claudia Angelos is Professor of Clinical Law at New York University School of Law and Director of the law school's Civil Rights Clinic. Together with students who act as attorneys under her supervision, she has litigated dozens of civil rights cases involving misconduct by New York State correction officers. She teaches in the area of prisoners' rights.

The Center for Community Alternatives ("CCA") is a private, non-profit organization that promotes reintegrative justice and a reduced reliance on incarceration through advocacy, services, and public policy development in the pursuit of civil and human rights. Many CCA clients are facing potential prison sentences, have been imprisoned, or are currently incarcerated in New York State prisons. Much of CCA's work focuses on helping individuals successfully reintegrate into the community after incarceration, and there is no question that the conditions of an individual's confinement are a factor that informs the individual's ability to successfully reintegrate. As an organization that works with those who have been incarcerated, CCA has an interest in ensuring that such individuals have a full opportunity to vindicate – in state or federal court – any violations of their civil rights that occurred while in prison.

The Uptown People's Law Center ("UPLC") is a not-for-profit legal services center serving poor and working people in Chicago, Illinois. In addition to its legal work for community residents, UPLC represents prisoners in challenges to prison conditions, the parole system, and a variety of other matters. UPLC receives over 5,000 requests for representation every year, and has one of the largest dockets of prison cases in Illinois. UPLC files cases, and provides advice to prisoners litigating their own cases, in both federal and state courts. UPLC has a vital interest in ensuring that state courts remain available to prisoners seeking to challenge the unlawful conduct of prison officials.

Forty-two U.S.C. §1983 was enacted to provide a remedy to the victims of civil rights violations where state law offered them inadequate protection. New York State's Correction Law §24 creates a subcategory of civil rights victims who are prohibited from seeking damages in state court for wrongs done to them by employees of the New York State Department of Correctional Services (DOCS). Our principal concern as *amici curiae* is that the New York State Court of Appeals (Court of Appeals) has erroneously characterized Correction Law §24 as a subject matter jurisdiction statute in an attempt to salvage a statute that creates an unconstitutional barrier to the litigation of federal civil rights claims in state supreme court, a court of general jurisdiction. If upheld, the decision below paves the way for the enactment of other such statutes in New York State and elsewhere that have the effect of significantly limiting relief under 42 U.S.C. §1983 for unpopular populations of civil rights victims.

Each of the amici represents numerous prisoners who seek relief in state courts. All share a concern that allowing the Haywood decision to stand will result in a significant curtailment of prisoners' ability to obtain redress for serious injuries caused by unconstitutional conduct by corrections officials.

SUMMARY OF THE ARGUMENT

Correction Law §24 closes the door of *every* New York State Court to civil actions, including actions pursuant to 42 U.S.C. §1983, for money damages against prison employees. Although New York supreme courts have the jurisdiction over §1983 claims against all other state employees – and over such actions against DOCS employees for declaratory and injunctive relief – the New York Court of Appeals in this case held that Correction Law §24 carves out an exception for DOCS employees by prohibiting §1983 actions for damages against DOCS employees in state court. The lower court has denominated this exception a subject matter jurisdiction limitation when, in reality, Correction Law §24 is an impermissible attempt by the State to grant immunity to DOCS employees.

While the state Court of Claims is available to prisoners seeking compensation for certain injuries under state law, the court does *not* have jurisdiction over individual prison employees, does *not* have jurisdiction to award damages against prison employees, and does *not* have jurisdiction over claims alleging violations of federal constitutional rights. Section 24 thus effectively grants prison employees absolute immunity from suits for damages in ***any*** state court in New York.

This immunity extends to all DOCS employees, whether the plaintiff is a prisoner alleging that prison officials were deliberately indifferent to serious medical needs, a DOCS employee alleging that his supervisor discriminated against him, or a citizen alleging that he was subject to an unreasonable search and seizure.

In holding that Correction Law §24 is a permissible jurisdiction-limiting statute, the Court of Appeals misapplied the standard set by this Court for determining whether a state has demonstrated a valid excuse or neutral rationale for its refusal to hear a federal cause of action. In addition, the Court of Appeals erred in interpreting this Court's decisions barring discrimination against federal claims. This Court should grant the petition for certiorari because allowing Correction Law §24 to be deemed a neutral and valid jurisdictional statute permits New York State and other states to enact similar statutes, thereby eroding the protections conferred by the United States Constitution and the Supremacy Clause.

APPLICABLE STATUTES AND LAW

Forty-two U.S.C. §1983 provides a remedy for individuals who have been deprived of their civil rights by persons acting under color of state law. *Monell v. Department of Social Services of City of New York,* 436 U.S. 658 (1978). It states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or

> causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Article VI, clause 2 of the Constitution, the Supremacy Clause, states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

This Court stated in *Howlett v. Rose*, 496 U.S. 356 (1990):

> Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient

> forum – although both might well be true – but because the Constitution and laws passed pursuant to it are as much the laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure.

Howlett v. Rose, 496 U.S. 356 (1990), *citing Claflin v. Houseman,* 93 U.S. 130, 136-137 (1876). Consequently, state and federal courts have concurrent jurisdiction over §1983 actions and a commensurate duty to enforce federal law. *See Howlett,* 496 U.S. 356, *citing Claflin,* 93 U.S. 130, 136-137; *see also Maine v. Thiboutot,* 448 U.S. 1 (1980); *Martinez v. State of California,* 444 U.S. 277 (1980).

New York Correction Law §24 provides in pertinent part that:

> 1. No civil action shall be brought in any court of the state . . . against any officer or employee of [DOCS], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.

> 2. Any [such] claim . . . shall be brought and maintained in the court of claims as a claim against the state.

I. REASONS FOR GRANTING THE PETITION

A. This Court Should Grant the Petition for Certiorari Because The Clear Purpose of Correction Law §24 Is To Immunize Certain State Employees.

The decision below frames Correction Law §24 in terms of permissible limits on subject matter jurisdiction when, in reality, it grants absolute immunity to prison officials from suits for damages brought in New York's courts. As Judge Jones stated in his dissent in this case:

> [I]f you strip away the veneer of the majority's arguments, section 24, a statute which, on its face, precludes anyone, including other DOCS employees and prisoners, from bringing damages claims against DOCS personnel - - is not a *neutral* jurisdictional barrier to a particular type of claim.

> In reality, section 24 functions as an immunity statute that allows state courts to selectively exclude prisoner suits for damages against DOCS personnel.

Haywood v. Drown, 9 N.Y.3d 481, 851 N.Y.S.2d 84 (2008). *See* Plaintiff's Petition for Writ of Certiorari, Appendix pp. 24a-25a.

To uphold its constitutionality, the New York Court of Appeals characterized Correction Law §24 – an obvious immunity-granting statute – as a subject matter jurisdiction statute, allowing it to disregard this Court's holdings that state courts cannot use a state created immunity defense to shield state employees from liability under federal statutes. In *Martinez*, this Court reasoned:

> A construction of the federal statute which permitted a state immunity defense to have a controlling effect would transmute a basic guarantee into an illusory promise; and the Supremacy Clause of the Constitution insures that the proper construction may be enforced. . . . The immunity claim raises a question of federal law.

Martinez, 444 U.S. 277, 284 n.8 (1980), *quoting Hampton v. Chicago,* 484 F. 2d 602, 607 (7th Cir. 1973). Ten years later, this Court reaffirmed its position, stating that "a State cannot immunize an official from liability for injuries compensable under federal law." *Howlett,* 496 U.S. at 377.

Unlike true jurisdictional provisions, which funnel certain types of cases to particular forums, the statute at issue here forecloses all §1983 cases for damages against DOCS employees in state court.

If the decision below is upheld, other states may adopt similar immunity statutes disguised as jurisdictional limitations. It is imperative that this Court grant the petition for certiorari to correct the Court of Appeals' error and to ensure that other states do not attempt an end-run around this Court's clear direction that a state's immunity defenses cannot be used to defeat rights created by federal statutes.

B. This Court Should Grant the Petition For Certiorari Because the Decision Below Ignores This Court's Precedent Limiting A State's Right to Foreclose Jurisdiction Over Federal Claims.

This Court has held that state legislation that purports to limit a state court's jurisdiction over federal claims otherwise within the state court's purview is unconstitutional unless justified by a valid excuse or neutral reason. *Howlett v. Rose,* 496 U.S. 356, 381 (1990). Such legislation must be narrowly construed. *Howlett,* 496 U.S. at 381. Merely calling a rule jurisdictional does not divest a state of its obligation to enforce federal law. *Id.* The rule must address "concerns of power over the person and competence over the subject matter." *Howlett,* 496 U.S. at 381. State policies involving *forum non conveniens*, the jurisdiction of state courts of limited jurisdiction[2] and access to state courts by nonresidents are the only instances where this Court found that the state had a valid excuse or neutral rationale for its refusal to hear a federal cause of action. *Howlett,* 496 U.S. at 381. Although Correction Law §24 does not address any of these concerns, the lower court nonetheless held it to be a permissible limitation on the "jurisdiction" of New York's supreme courts.[3]

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[2] New York state supreme courts are courts of general jurisdiction. *McKinney's Const.,* Article VI, §7. That jurisdiction is "original, unlimited and unqualified." *Kagen v. Kagen,* 21 N.Y.2d 532, 537 (1968) (internal citations omitted). The jurisdiction and purpose of New York's supreme courts is so comprehensive that it encompasses every conceivable cause of action. *People v. Luce,* 204 N.Y. 478, 487-88 (1912).

[3] While the court in this case characterized Correction Law §24 as establishing a neutral jurisdictional rule, in an earlier case it characterized the purpose quite differently, identifying its purpose as one to limit frivolous lawsuits by state prisoners. *Arteaga v. State of New* York, 72 N.Y. 2d 212, 219 (1988). The rationale of discouraging frivolous lawsuits is only permissible where the challenged statute is not preempted by federal law. *See Howlett,* 496 U.S. at 380. ("A State may not however, relieve congestion in its courts by declaring a whole category of federal claims to be frivolous.")

In *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 233-234 (1934), this Court held that a jurisdictional limitation will be deemed valid and neutral where it does not discriminate against federal claims in favor of analogous state claims. Here, based upon a very narrow interpretation of this language, the lower court concluded that Correction Law §24 is constitutional because it bars federal *and* state damage claims from being filed against DOCS employees in state court.

Such a narrow reading of *McKnett* is questionable in light of this Court's later decision in *Martinez v. California*, 444 U.S. at 283-284 n.7. In *Martinez*, this Court held that "where the same *type of claim*, arising under state law, would be enforced in state courts, the state courts are not free to refuse enforcement of the federal claim." *Martinez*, at 238 n.7 (*emphasis added*). In New York, the supreme courts exercise jurisdiction over the *same type* of

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The court's earlier interpretation is supported by an amendment expanding the scope of Correction Law §24, currently being considered by the NY legislature to add Office of Mental Health (OMH) employees to the list of those who are shielded from lawsuits that may arise during their employment in a New York State prison. The Purpose of Assembly Bill A04208 and Senate Bill 332 is to "ensure that employees of the Office of Mental Health (OMH) who work in prison mental health units, receive the same *immunity* from civil damage actions as all other State employees who work in the prisons." (Emphasis added).

state and federal claims as were raised in this case against state police officers and other state employees in their personal/individual capacities[4] "and [are] fully competent to provide the remedies the federal statute requires." *Howlett*, 496 U.S. at 378. By failing to provide a forum in state court for this limited category of federal claims, New York discriminates against §1983 claims brought against DOCS employees thereby violating the dictates of *Howlett*.

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[4] In New York State, an individual subjected to excessive use of force by a New York State employee, other than a DOCS employee, can file a lawsuit in supreme court for damages and can have his claim decided by a jury. *Prior v. County of Saratoga*, 245 A.D.2d 658 (3d Dep't 1977) (arrestee found to be prevailing party in state court action filed in supreme court alleging battery and civil rights claims against county for excessive use of force by officers in sheriff's department); *see also McCummings v. New York City Transit Authority*, 177 A.D.2d 24 (1st Dep't 1992) (jury awarded robbery suspect over $4.3 million after determining officer used excessive force); *Ott v. Barash*, 109 A.D.2d 254 (2d Dep't 1985) (plaintiff allowed to pursue action against state employee tortfeasor for negligence and intentional tort in the supreme court "even where the employee's tortious conduct was committed in the course of his employment"); *Harvey v. Brandt*, 254 A.D.2d 718 (4th Dep't 1998) (arrestee filed §1983 action against police officer in supreme court, alleging excessive force); *Farley v. Town of Hamburg*, 34 A.D.3d 1294 (4th Dep't 2006) (plaintiff filed wrongful death action against police officer alleging assault and battery, negligence and violation of constitutional and civil rights); *Nelson v. Town of Glenville*, 220 A.D.2d 955 (3d Dep't 1995) (plaintiff, father of minor, sued town and individual police officers alleging false arrest and assault and battery).

Correction Law §24 limits subject matter jurisdiction on a basis not "valid and neutral" under this Court's decisions, and New York state courts hear both §1983 claims and similar state law claims against similar state actors. Thus, if this Court determines that Correction Law §24 is a subject matter jurisdiction statute, it must also find that §1983 preempts Correction Law §24 because the state has no neutral reason or "valid excuse" for refusing to hear this subset of §1983 cases. *Howlett*, 496 U.S. at 380. A state policy that permits §1983 actions against some state employees for constitutional torts, but prohibits jurisdiction over other state employees for the same actions, "can be based only on the rationale that such persons should not be held liable for §1983 violations in the courts of the State." *Id.* That result is precisely what *Howlett* and the Supremacy Clause forbid.

C. This Court Should Grant the Petition for Certiorari Because Allowing the Decision Below to Stand Will Undermine This Court's Prior Decisions Barring Discrimination Against Federal Claims.

1. The decision below upholds a state statute that significantly burdens a federal right.

In *Felder v. Casey*, 487 U.S. 131 (1988), this Court struck down a Wisconsin Notice of Claim statute, holding that §1983 preempted the state statute. The Court found that the notice requirement "burdens the exercise of the federal right by forcing civil rights victims who seek redress in state courts to comply with a requirement that is entirely absent from civil rights litigation in federal courts," a burden that "is inconsistent in both design and effect with the compensatory aims of the federal civil rights laws." 487 U.S. at 141.

In analyzing whether a state rule limiting the enforcement in state court of a federal right is permissible, *Felder* focused on whether the rule was the natural or permissible consequence of an otherwise neutral, uniformly applicable state rule. In finding that it was not, the *Felder* court concluded that the notice of claim rule was "imposed only upon a specific class of plaintiffs – those who sue governmental defendants – and, as we have seen, is firmly rooted in policies very much related to, and to a large extent directly contrary to, the substantive cause of action provided those plaintiffs." *Felder*, 487 U.S. at 145. Such a "burdening of a federal right," held the Court, could not stand. *Id.* In so ruling, the *Felder* Court explained:

> Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations. A state law that conditions that right of recovery upon compliance with a rule designed to minimize governmental liability, and that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law. Principles of federalism, as well as the Supremacy Clause, dictate that such a state law must give way to vindication of the federal right when that right is asserted in state court.

Felder, 487 U.S. at 153.

Correction Law §24 is an even more drastic restriction than the Wisconsin notice statute; it completely bars individuals whose civil rights have been violated by DOCS employees from bringing

§1983 claims for damages against those employees in state court where the employees' actions were "within the scope of their employment." *Haywood*, 35 A.D.3d 1290, 826 N.Y.S.2d 522 (4th Dep't 2006) *aff'd*, 9 N.Y.3d 481, 851 N.Y.S.2d 854 (2007). Nor can those individuals bring §1983 actions in the State Court of Claims because the State of New York is not a person within the meaning of the statute, *see Brown v. State of New York*, 89 N.Y.2d 172, 185 (1996), and because the Court of Claims will not entertain federal claims.[5] *Cavanaugh v. Doherty*, 243 A.D.2d 92 (1998) (holding that the state supreme court, not the Court of Claims, is the proper forum for actions under 42 U.S.C. §1983).

Correction Law §24 imposes additional burdens on individuals seeking to litigate §1983 cases against DOCS employees in state court. First, to obtain from the state courts the full relief to which victims of civil rights violations are entitled, victims of civil rights violations by DOCS personnel must sue in two different courts; for damages, in the Court of Claims on a state law tort theory, and for injunctive or similar relief, in state court via an Article 78 proceeding (*see* McKinney's Civil Procedure Law & Rules §7801 et seq.) or a §1983 action. Second, Correction Law §24 permits civil actions in state court for damages against DOCS employees but only if the conduct at issue was not within the scope of employment. Thus, uncounseled, and often uneducated, prisoners risk having their claims dismissed if they incorrectly assess whether the defendants' conduct was within the scope of their employment.

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[5] Even if the conduct of DOCS employees could be the subject of a §1983 in the Court of Claims, the notice of claim requirement, set forth in McKinney's Court of Claims Act §10, significantly shortens the limitations period for cases filed in the Court of Claims, thereby violating the Supreme Court's decision in *Felder v. Casey*, 487 U.S. 131 (1988).

That litigants who do not wish to bear these burdens in state court may resort to federal court is not an answer; the supremacy clause *obliges* state courts to hear federal claims *without discrimination.*

2. The decision below upholds a state statute that discriminates against a federal right.

In *Testa v. Katt*, 330 U.S. 386 (1947), the Rhode Island Supreme Court refused to hear a treble damages claim under the Federal Emergency Price Control Act, finding that the statute was penal in nature and reasoning that the state's policy against enforcement of statutes of other states and the United States permitted the state to refuse enforcement. *Id.* at 388, 392. The *Testa* Court held that Rhode Island had violated the anti-discrimination principle on two grounds. First, the Court noted, because a *similar* type of claim would be enforced by the State court if it arose under Rhode Island Law, a refusal to hear the federal claim violated principles of anti-discrimination. *Id.* at 394. Second, the refusal of the Rhode Island courts to hear this federal claim violated the principles of anti-discrimination because the same courts enforced other Federal claims including claims for double damages arising under of the Fair Labor Standards Act. *Id.* at 394.

Most recently, this Court struck down a Florida state court decision dismissing a §1983 action against a school board on the basis of sovereign immunity. *Howlett*, 496 U.S. 356. The *Howlett* Court equated §1983 actions to general tort claims that were allowed to be filed against state entities. Concluding that "the Florida court's refusal to entertain one discrete category of §1983 claims, when the court entertains similar state-law actions against state defendants, violates the Supremacy Clause," *id.* at 372, the Court emphasized that the Florida court "exercises jurisdiction over tort claims by private citizens against state entities (including school boards), of the size and type of petitioner's claim here, and it can enter judgment against them." *Id.* at 378.

Correction Law §24 prohibits state courts from adjudicating a subset of §1983 claims while cognate state law claims are litigated in the Court of Claims[6] and generically similar state law claims and

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[6] The New York Court of Claims exercises jurisdiction over state tort claims, including *state* constitutional claims, *see e.g., Brown v. State of New York*, 89 N.Y.2d 172, 185 (1996), but "lack[s] jurisdiction to impose damages for a violation of the Federal Constitution." *Safran v. State of New York*, 2006-018-553, Claim Nos. 112556, 112611, Motion No. M-72239, *citing Zagarella v. State of New York*, 149 A.D.2d 503(1989); *Ferrick v. State of New York*, 198 A.D.2d 822 (1993); *De LaRosa*

§1983 claims against other state employees are regularly decided by the state supreme courts. *See Testa,* 330 U.S. 386. Thus, New York has done exactly what *Howlett* and *Testa* forbid: "refus[ed] to entertain one discrete category of §1983 claims, when the court entertains similar state-law actions against state defendants," *Howlett*, 496 U.S. at 372, and other similar federal law actions, *Testa*, 330 U.S. at 394.[7]

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v. State of New York, 173 Misc. 2d 1007 (1997).

[7] In commenting on the application of *Howlett* to New York's Correction Law §24, Professor Steven Steinglass writes: "The most flagrant example of a state court system selectively excluding §1983 cases is the refusal of New York courts to entertain §1983 actions against state correctional officials. . . . The Supreme Court's decision in *Howlett* undercuts the New York policy of precluding suits against correctional officers. The state policy is based on a substantive judgment that the state, as contrasted to state employees, should be liable for certain wrongful acts; but this state policy is not a neutral rule of judicial administration. Moreover, the willingness of New York to entertain other §1983 suits against other state employees, implicates the suggestion in *Howlett* that a state that opens its courts to some §1983 suits may not bar other §1983 suits." Steven H. Steinglass, "An Introduction to State Court Section 1983 Litigation," p. 153, in *Sword and Shield: A Practical Approach to Section 1983 Litigation* (3d ed. ABA 2006); *see also*, Steven H. Steinglass, *Section 1983 Litigation in State Courts*, Ch. 15:15 n. 23 (Thomson West 2007).

a. *Correction Law §24 discriminates against a federal right by denying compensatory and punitive damages.*

Section 1983 says that "every person" who under color of state law subjects another person to a violation of federal rights "shall be liable to the party injured in an action at law." Imposing personal liability for such injury implements core values set forth in our Constitution and sends a clear and vital message to anyone who would offend, under color of state law, the Constitutional rights of another. A finding of liability against the culpable "person" is the irreducible *sine qua non* of federal law, for which the states may not substitute their own policy choices. This point is far from formalistic. A judicial finding that an identified individual has to pay damages for violating the constitutional rights of another person carries with it a stigma that highlights the reprehensibility of the wrongdoer's conduct as well as the significance of the rights involved. When a damage award is issued against an agency, that stigma is lost.[8]

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[8] Although there are cases where the state may chose to indemnify a DOCS employee after there is a finding of wrongdoing, the stigma of being found liable in a public forum and being ordered to pay damages is still present. The public focus is on the person who committed the wrong and the damages that must be paid to compensate the victim. Often the public is unaware of the indemnification.

Punitive damages also serve a recognized purpose in §1983 litigation. "[T]he purpose of punitive damages is to punish the defendant and to deter him and others from similar conduct in the future." *Vasbinder v. Scott,* 976 F.2d 118, 121 (2d Cir.1992).

By prohibiting a civil rights victim of a DOCS employee from obtaining compensatory or punitive damages in state court from the individual who has violated his federal constitutional rights while allowing an award of such damages in other similar state law claims, Correction Law §24 discriminates against "one discrete category of §1983 claims." *Howlett,* 496 U.S. at 372; *see also Testa*, 330 U.S. 386.

b. *Correction Law §24 discriminates against a federal right by denying individuals whose civil rights are violated by DOCS employees the right to a jury trial and an award of attorneys fees.*

In a §1983 action, in state or federal court, a plaintiff has a right to a jury trial.[9] Congress has also authorized the award of attorneys fees to the prevailing party in a §1983 action. 42 U.S.C.

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[9] Plaintiffs in §1983 actions in state supreme court are, in fact, afforded a trial by jury. *Barone v. City of Mount Vernon*, 170 A.D. 2d 557 (2d Dep't 1991).

§1988(b). Correction Law §24 mandates that any damage claim against a DOCS employee be pursued in the Court of Claims where there are no juries and no right to an award of attorneys fees. *McKinney's Court of Claims Act* §12(3) and §27. By excluding civil rights victims of DOCS employees from suing in state supreme court where they could have a jury trial and, if successful, an award of attorneys fees, Correction Law §24 discriminates against a federal right.

c. *Correction Law §24 discriminates against a federal right by failing to provide certain civil rights victims the right to a choice of forum.*

State and federal courts have concurrent jurisdiction over §1983 claims. *Allen v. McCurry*, 449 U.S. 90, 99 (1980), *citing Monroe*, 365 U.S. at 183; *see also, Thiboutot*, 448 U.S. 1 (1980); *Martinez*, 444 U.S. 277 (1980). Concurrent jurisdiction affords litigants a choice of forum, which "inevitably affects the scope of the substantive right to be vindicated before the chosen forum." *U.S. Bulk Carriers v. Arguelles*, 400 U.S 351, 359-360 (1971). The choice of forum is based on considerations such as the composition of the respective jury pools, the plaintiff's geographic location, the cost of litigation, including filing fees, the complexities of the applicable rules of civil procedure, access to counsel, etc.

Most civil rights plaintiffs do have a choice of forum and can file their actions in either state or federal court. But the victim of a DOCS employee who seeks to litigate his entire civil rights claim in one court and to receive all the relief available under §1983 in one action, can only file his action in federal court.

In some cases, Correction Law §24 not only discriminates against a federal right but can also result in a complete denial of access to the courts. The three strikes provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. Section 1915(g), prohibits a prisoner from proceeding *in forma pauperis* in federal court unless he is "under imminent danger of serious physical injury" where the prisoner has brought three or more actions in federal court that have been dismissed because they were frivolous, malicious or failed to state a cause of action. *Id.* In upholding the provision's constitutionality, at least one court has relied in part on the availability of state courts to hear federal claims. In *Wilson v. Yaklich*, 148 F.3d 596, 605 (6th Cir. Ohio 1998), the court held:

> Both as written and as applied in this case, § 1915(g) does not infringe upon the fundamental right of access to the courts. The plaintiff, despite being barred from bringing his present § 1983 claims in federal court as an indigent, still had available to him at the time of the initial filing the opportunity to

> litigate his federal constitutional causes of action in forma pauperis in state court. *See Patsy v. Board of Regents of Florida, 457 U.S. 496, 506-07, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982).* As long as a judicial forum is available to a litigant, it cannot be said that the right of access to the courts has been denied. *Hampton, 106 F.3d at 1285.*

Conversely, Correction Law §24 denies a judicial forum to a New York prisoner who is indigent and has had the requisite three dismissals, thus denying him access to courts in the most literal sense.

D. This Court Should Grant the Petition for Certiorari Because Allowing the Lower Court's Decision To Stand Encourages the Passage of Other Statutes in New York and Across the Country That Undermine the Supremacy Clause and Principles of Federalism.

If the decision below is allowed to stand, nothing will stop other state agencies in New York and elsewhere from limiting their exposure to civil liability through statutes barring damage claims against their employees in state court. Although this Court has never held that states *must* entertain 42 U.S.C. §1983 actions, it has held that allowing states to pick and choose which state actors should be subject to §1983 liability effectively undermines the very purpose for which the statute was enacted. *Howlett,* 496 U.S. at 372.

Our system of judicial federalism provides dual protection to citizens under both the Federal and state constitutions. The state courts play a vital role in interpreting and enforcing the Federal Constitution. As this Court stated in *Immuno AG v. Moor-Jankowski*:

> When the Court reviews a question of Federal constitutional law. . . . it acts as part of a larger judicial system embracing not only New York but the Nation as a whole. . . .[I]t is important that State courts participate in the Nation's court structure. They have much to contribute to the Supreme Court's determination of Federal law by addressing the issues thoroughly and persuasively and providing local perspectives for the development of constitutional rules.

Immuno AG v. Moor-Jankowski, 77 N.Y.2d 235, 260 (1991).

Correction Law §24 violates the principles of federalism by largely preventing New York state courts from analyzing federal constitutional issues that arise from the operations of the state prison system. *Thiboutot,* 448 U.S. 1 (1980).

Dated: Ithaca, New York
May 5, 2008

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JOINT
APPENDIX

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No. 07-10374

In the Supreme Court of the United States

KEITH HAYWOOD,

Petitioner,

v.

CURTIS DROWN, *ET AL.*

Respondents.

On Writ of *Certiorari* to the New York Court of Appeals

JOINT APPENDIX

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and
KEITH HAYWOOD, Plaintiff, v. CURTIS DROWN,
Defendant No. 36664-05

DATE	PROCEEDING
July 11, 2005	Plaintiff's Verified Federal Law Complaint for Punitive Damages Under Title 42 U.S.C.A. §1983/Together With State [N.Y.] Constitutional Common Law Claims in *Smith*
July 19, 2005	Plaintiff's Verified Federal Law Complaint For Punitive Damages Under Title 42 USCA §1983 in *Drown*
November 29, 2005	Defendants' Motion to Dismiss/Change Venue in *Smith*
December 19, 2005	Plaintiff's Affidavit in Opposition to Defendants Motion to Dismiss/or Change Venue in *Smith*
December 27, 2005	Defendants' Motion to Dismiss/Change Venue in *Drown*
December 29, 2005	AMENDED Plaintiff's Verified Federal Law Complaint for Punitive Damages Under Title 42 U.S.C.A. §1983/Together With State [N.Y.] Constitutional Common Law Claims

	in *Smith*
December 29, 2005	AMENDED Plaintiff's Verified Federal Law Complaint For Punitive damages Under Title 42 USCA §1983 in *Drown*
February 1, 2006	Judgment in *Smith*
February 1, 2006	Judgment in *Drown*
February 10, 2006	Plaintiff's Notice of Appeal in *Smith*
February 10, 2006	Plaintiff's Notice of Appeal in *Drown*

State of New York Supreme Court Appellate Division Fourth Division

KEITH HAYWOOD, Plaintiff v. PAT SMITH, STEVE JENNETT, P. DEVLIN, M. CORYER, and D. BOUVIER, Defendants
and
KEITH HAYWOOD, Plaintiff, v. CURTIS DROWN,
Defendant Nos. CA 06-00601 and CA 06-00602

DATE	PROCEEDING
April 5, 2006	Order Granting Appellant's Motion to Consolidate Cases for Purpose of Appeal
July 11, 2006	Joint Stipulation as to the Correctness of Record on Appeal in *Smith*
July 11, 2006	Joint Stipulation as to the Correctness of Record on Appeal in *Drown*
December 22, 2006	Judgment in *Smith*
December 22, 2006	Judgment in *Drown*
January 18, 2007	Plaintiff's Consolidated Notice of Appeal

State of New York
Court of Appeals
Keith Haywood, Appellant v. Curtis Drown, Respondent
No. 146

DATE	PROCEEDING
January 18, 2007	Appellant's Consolidated Notice of Appeal
February 1, 2007	Appellant's Preliminary Appeal Statement in *Smith*
February 1, 2007	Appellant's Preliminary Appeal Statement in *Drown*
July 23, 2007	Appellant's Brief
September 5, 2007	Respondent's Brief
September 20, 2007	Appellant's Reply Brief
August 28, 2007	Amicus Brief
November 27, 2007	Judgment

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

KEITH HAYWOOD,

Plaintiff,

- against -

PAT SMITH, Civilian Supt; STEVE JENNETT, Prison Guard Lieutenant; P. DEVLIN, Prison Guard Sergeant; M. CORYER, Prison Guard; and D. BOUVIER, Prison Guard,

Defendants.

PLAINTIFF'S VERIFIED FEDERAL LAW COMPLAINT FOR PUNITIVE DAMAGES UNDER TITLE 42 U.S.C.A. §1983/TOGETHER WITH STATE [N.Y.] CONSTITUTIONAL COMMON LAW CLAIMS

INDEX No.: 36665

SUBJECT MATTER JURISDICTION

1. This Court has general jurisdiction over all state claims as well as federal law claims under 42 U.S.C.A. §1983, for damages against all named defendant(s) who violated the plaintiff's Civil Rights, while acting under the Color of State Law.

Furthermore, this federal law claim is being filed under the Supremacy Clause of the United States Constitution. (See, Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302 (1988); and Cavanaugh v. Doherety, 243 A.D.2d 92 (1998). The Court is especially directed to Howlett v. Rose, 496 U.S. 356 (1990). The state law does not have the power to confer immunity on federal claims. This Court is fully competent to provide the remedies the federal statute requires. id 378-379. Plaintiff's state law claims are allowed in accordance to Morris v. Eversley, 205 F.S.2d 234 (SDNY 2002).

2. Under the Civil Practice Law and Rules ("CPLR"), Section 509, plaintiff designates the County of Wyoming for the place of trial.

JURY OR NON-JURY TRIAL

3. The plaintiff will respectively demand a jury trial on all claims raised in the pleadings.

PLACE OF PRESENT CONFINEMENT

4. Plaintiff currently resides at the Attica Correctional Facility/P.O. Box 149/639 Exchange Street/Attica, New York 14011-0149 (716) 591-2000.

PARTIES PLAINTIFF

5. Plaintiff Keith Haywood, is a natural citizen of the United States, and was at all times relevant herein, a prisoner of the New State Department of Correctional Services ("DOCS").

PARTIES DEFENDANT(S)

6. Defendant Pat Smith ("Smith"), was at all times relevant herein, an employee of DOCS, with the civilian rank of industrial superintendent, acting has a Tier III hearing officer.

7. Defendant Steve Jennett ("Jennett"), was at all times relevant herein, a duly appointed employee of DOCS with the supervisory rank of Lieutenant.

8. Defendant M. Coryer ("Coryer"), was at all times relevant herein, a duly appointed employee of DOCS with the supervisory rank of prison guard.

9. Defendant P. Devlin ("Devlin"), was at all times relevant herein, a duly appointed employee of DOCS with the supervisory rank of Sergeant.

10. Defendant D. Bouvier ("Bouvier"), was at all times relevant herein, a duly appointed employee of DOCS with the supervisory rank of prison guard.

11. Defendant's Smith, Jennett, Coryer, Devlin, and Bouvier, are being sued individually as correctional employees. Relief is sought against each and all defendants as well as their agents, assistants, successors, employees, and persons acting in concert with, or cooperation with them, or at their direction, or under their supervision.

12. At all times relevant herein, all of the defendants supra, and their agents, etc, acted

pursuant to the policies, regulations, or decisions officially adapted, or promulgated by those in DOCS who's acts may fairly be said to represent official policy, or were pursuant to governmental custom of DOCS.

13. At all times relevant herein, defendants have acted under the color of state law, or in active concert with such defendants who are so acting.

STATEMENT OF FACTS

14. On June 16, 2003, plaintiff was involved in an altercation with defendant Coryer, after defendant Coryer grabbed the plaintiff from behind without no justification.

15. Plaintiff was then thrown down to the floor and handcuffs were placed upon the plaintiff with his hands behind his back. Plaintiff did not struggle back, but suffered a minor injury to his left pinkie finger nevertheless.

16. Present during this incident was defendant Devlin, and Bouvier. Plaintiff while on the ground, over heard and saw defendants Bouvier, Devlin, and Coryer talking in which Devlin told Coryer to "make it look like an assault with this one, Bouvier will back you, and I'll speak to Steve Jennett. We'll take care of this." Devlin then shouted at the plaintiff to "turn his head around and put his head to the fucking ground."

17. Upon reaching the hospital, defendant Devlin stated that "no one assaults my people,

without severe repercussions. Kiss your summer away, and in case the assault don't stick, [I]'ll personally make sure something else will, count on it."

18. Plaintiff profusely stated that he did not assault his guard, and defendant Devlin then stated "so are you saying correction officer's tell lies?" Plaintiff was then taken to D-5-4 cell confinement.

19. On June 17, 2003, at around 8:40 a.m., plaintiff was taken to the urinalysis room. Plaintiff was told the test was being given due to a use of force, which request was made by defendant Devlin. Plaintiff, who has never had a dirty urine, complied, and was returned back to his cell. Defendant Jennett authorized the test under false pretense. He checked suspicion, whereas Devlin stated only "use of force," [n]ot suspicion.

20. On June 17, 2003, at around 9:47 a.m., plaintiff was served with a misbehavior report that stated facts that were not true, regarding the incident with defendant Coryer.

21. On June 19, 2003, at around 9:25 a.m., plaintiff was served another misbehavior report for testing positive for cannabinoids. Said test was [s]olely based upon the incident of June 16, 2003.

22. On June 24, 2003, plaintiff was found guilty of drug use and given 90 days loss of everything. (Plaintiff has never tested positive during his 17 years in custody)

23. On June 30, 2003, plaintiff was found guilty of assault by defendant Smith. Defendant Smith stated to the plaintiff after the hearing, that she knew there were inconsistencies, but for the [m]orale of the correction officers, I had to be found guilty. Defendant Smith gave the plaintiff 90 days special housing unit ("SHU"), suspended 45 days; 3 month's loss of good time and 150 days over the plaintiff's head. She further stated that "Clinton has a 99 1/2 percent conviction rate in Tier hearings, because with the officer versus inmate ratio, the officer is [a]lways right, and you will be found guilty regardless."

24. Plaintiff appealed both hearings.

25. Shortly thereafter, the June 24, 2003 hearing was affirmed on appeal to Albany. [It should be noted that plaintiff has undergone 4 consecutive urine test, and all the results were negative]

26. The June 30, 2003 hearing with defendant Smith, no decision came back, until plaintiff filed an Article §78 challanging both Tier hearings.

27. On January 29, 2004, the hearing conducted by defendant Smith, was administratively reversed and ordered expunged from the plaintiff's disciplinary and institutional records.

28. The June 24, 2003, Tier III hearing for drug use, was transferred to the 3rd Department on the issues of substantive evidence.

29. On August 20, 2004, plaintiff withdrew the remaining action from the 3rd Department, and is now bringing this issue under these proceedings. Plaintiff is not collaterally estopped nor does res judicata apply. No determination or final decision by any Court has been rendered under this issue, and the statute of limitations under 42 U.S.C.A. §1983 has not tolled.

AS FOR A FIRST CAUSE OF ACTION
42 U.S.C.A. § 1983 CIVIL RIGHTS VIOLATIONS

30. Plaintiff repeats the entire averments contained paragraphs 1 through 29.

31. Plaintiff states that defendants Coryer, Smith, Jennett, Devlin and Bouvier, all conspired to and did violate the plaintiff's Civil Rights by first assaulting the plaintiff without cause, then fabricating a false misbehavior report and tampering with urinalysis testing. Plaintiff never tested positive for any drug, during his 17 years in corrections.

32. Defendant Devlin, Bouvier, Coryer, with the help of Jennett, planned and carried out a cover-up to shield one another, by falsely making and submitting a false misbehavior report and creating false evidence by way of a urine test, to wrongfully have plaintiff confined to punitive special housing, and knew or should have known that said acts, actions, either directly or directly, were in violation of clearly established rules, regulations, actual policies, and laws of the State of New York. Said

acts were malicious, intentional, wanton, with the sole purposes of covering up an illegal act and with the sole purpose of causing the plaintiff harm.

33. Defendant Smith, acting as a hearing officer, knew or should have known that she had violated clearly established rules, regulations, policies, and laws of the State of New York and by such did in fact violate plaintiff's clearly established constitutional rights to a fair and impartial hearing, by finding plaintiff guilty for the [m]orale of the guards, [e]ven when [s]he knew that the plaintiff was not guilty. Said acts were malicious, intentional and wanton, with the sole purpose of causing the plaintiff harm, by abusing the Tier hearing system to carry out unjust punishments.

34. Defendant's Devlin and Jennett, acting in concert, ordered a urine test, and either personally tampered with or indirectly had someone tamper with said sample, to justify the unnecessary use of force, and to further cover-up the truth by submitting false documents to be made part of DOCS business records, for the sole purpose of shielding, protecting, and covering up the truth to protect defendant Coryer, who had violated clearly established rules, regulations, policies, and laws of the State of New York.

35. Defendant's Devlin, Jennett, Smith, Bouvier, and Coryer's conduct was both deliberate and intentional to deprive the plaintiff of his Civil Rights. Defendant's knew or should have known that

their conduct violated rules, regulations, directives and plaintiff's Civil Rights.

36. The defendant's conduct caused the plaintiff to spend five month's in SHU status. Defendant's conspiracy, intentional, deliberate, and wanton actions, caused the plaintiff to be denied parole at his previous August 2003 board appearance. Defendant Coryer did in fact use unnecessary use of force upon the plaintiff resulting in minor injury to plaintiff's left pinkie finger, without no legal justification within the boundaries of his job description as a prison guard.

37. All defendant's did violate plaintiff's Eighth, and Fourteenth Amendment Rights (i.e., guarantee clause; equal protection; wrongful confinement; due process; and unnecessary use of force.

AS FOR A SECOND SEPARATE FINAL CAUSE OF ACTION COMMON LAW VIOLATION OF STATE CONSTITUTIONAL LAW

38. Plaintiff repeats the averment contained in paragraphs 1 through 29.

39. All defendant's supra, did violate plaintiff's State Constitutional Rights to remain free from unnecessary use of force, to enjoy equal protection of the law, to enjoy a liberty interest to remain free from wrongful confinement; due process of law and all other guarantees of the New York

State Constitution, in accordance to the Article I of said State Constitution.

40. Like the federal constitution, the state constitution is the Supreme Law within the State of New York, with the power to protect the rights of minorities against the arbitrary, intentional, and deliberate actions of those in power.

41. Defendant's supra knew or should have known that their actions would and did violate plaintiff clearly established State Constitutional Rights which were in full effect at the time and/or commission of the defendant's supra conduct, which is the cause for this instant action.

RELIEF SOUGHT

42. The plaintiff Keith Haywood, will seek the following relief independently and separately for each separate cause of action, as if it were stated therein, to wit, the relief sought below will be applied to both causes of actions separately as if it were so stated.

a. Expungement of the Tier III hearing dated June 24, 2003;

b. Punitive damages in the amount of $40,000.00. dollars, from each defendant separately;

c. Punitive damages in the amount of $10,000.00. dollars from defendant Coryer for unnecessary use of force;

d. Reimbursement of mandatory surcharge and back pay that the plaintiff was receiving prior to the June 16 & 17, 2003 incident; and

e. The cost and fees as well as attorney fees to bring this action, and whatever relief the Court deems just, fair, and appropriate.

Dated: June 11, 2005
Attica, New York

KEITH HAYWOOD,
#90-T-3704
Plaintiff, Pro se.
Attica Corr. Facility
P.O. Box 149
Attica, N.Y. 14011-0149
(716) 591-2000

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

KEITH HAYWOOD,

Plaintiff,

- against -

CURTIS DROWN,
Civilian
Hearing Officer,

Defendant.

PLAINTIFF'S VERIFIED FEDERAL LAW COMPLAINT FOR PUNITIVE DAMAGES UNDER TITLE 42 USCA §1983

INDEX No.: 36664

SUBJECT MATTER JURISDICTION

1. This Court has general jurisdiction over all state claims as well as federal law claims under 42 U.S.C.A. §1983, for damages against all named defendant(s) who violated the plaintiff's Civil Rights, while acting under the Color of State Law. Furthermore, this federal law claim is being filed under the Supremacy Clause of the United States Constitution. (See, Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302 (1988); and Cavanaugh v. Doherety, 243 A.D.2d 92 (1998). The Court is especially directed to Howlett v. Rose, 496 U.S. 356 (1990). The state law does not have the power to confer immunity on federal claims. This Court is fully

competent to provide the remedies the federal statute requires. id 378-379. Plaintiff's state law claims are allowed in accordance to Morris v. Eversley, 205 F.S.2d 234 (SDNY 2002).

2. Under the Civil Practice Law and Rules ("CPLR"), Section 509, plaintiff designates the County of Wyoming for the place of trial.

JURY OR NON-JURY TRIAL

3. The plaintiff will respectively demand a jury trial on all claims raised in the pleadings.

PLACE OF PRESENT CONFINEMENT

4. Plaintiff currently resides at the Attica Correctional Facility/P.O. Box 149/639 Exchange Street/ Attica, New York 14011-0149 (716) 591-2000.

PARTIES PLAINTIFF

5. Plaintiff Keith Haywood, is a natural citizen of the United States, and was at all times relevant herein, a prisoner of the New State Department of Correctional Services ("DOCS").

PARTIES DEFENDANT(S)

6. Defendant Curtis Drown ("Drown"), was at all times relevant herein, a duly appointed employee of the Department of Correctional Services ("DOCS"), with the rank of civilian hearing officer.

7. Defendant Drown is being sued in his personal capacity. Relief is sought against him as well as his agents, assistants, successors, employees, and persons acting in concert with, or cooperation with, or at his direction, or under his supervision. At all times relevant herein, defendant Drown supra, acted pursuant to the policies, regulation, or decisions officially maintained, completely adapted, or promulgated by those in DOCS who's acts may fairly be said to represent official policy, or were pursuant to governmental custom of DOCS.

8. At all times relevant herein, defendant Drown has acted under the color of state law.

STATEMENT OF FACTS

9. On July 14, 2004, plaintiff received a misbehavior report authored by prison guard Vincent, which charged the following;

> "Inmates shall not solicit "goods or services" from any business or any person other than immediate family members without the consent and approval of the superintendent." (emphasis on the words "goods or services") Rule violation 103.20.
> . . .

10. The contents of the misbehavior report written by prison guard Vincent, stated in verbatim the following;

> "At approximately 12:00 pm on the above date, I officer M. Vincent was checking

> return to sender mail for contraband. Upon checking a letter addressed to Ms. Rakenya Livingston, being returned to inmate K. Haywood, #90-T-3704 because the letter was unclaimed. I noticed a line on the bottom of the papers stating "upon further research, I would like to take on a lawsuit in your behalf against HUD and the Miami Corp charged with managing the building. I have enclosed a copy letter from inmate Haywood and signed by inmate Haywood. Letter was confiscated as contraband and placed in contraband locker #3 shelf B left."

11. Defendant Drown conducted the hearing and found plaintiff guilty of the charge.

12. Defendant Drown, who is an attorney, and has an office within the City of Plattsburgh, New York, did not rely on the facts of the case, but instead based his decision on personal conclusions contradictory to the facts. There was no evidence to substantiate the findings of guilt and furthermore the evidence produced by the plaintiff, had the hearing been conducted fair and impartial, would have been terminated in the plaintiff's favor. Plaintiff's appeal was later affirmed by DOCS.

AS FOR A FIRST AND ONLY CAUSE OF ACTION 42 U.S.C.A. §1983 CIVIL RIGHTS VIOLATIONS

13. Plaintiff repeats the entire averments contained in paragraphs 1 through 12.

14. Plaintiff states that defendant Drown violated plaintiff's clearly established Civil Rights under due process of law, by not conducting a fair and impartial hearing. Defendant Drown knew or should have known that his actions which were deliberate and intentional, violated clearly established rules, regulations, policies, and laws of the State of New York. Said defendant is a competent licensed attorney, within the State of New York.

15. The penalty imposed was due solely for the purposes of censorship of the plaintiff, to prohibit the plaintiff from corresponding with anyone of his choosing, under the First Amendment of the U.S. Constitution, and the New York State Constitution under the Articles provided thereof.

16. Defendant Drown, deliberately, and intentionally inflicted punitive restrictions on plaintiff, for the sole purpose of censorship. A person of average thought and reason would have came to a difficult conclusion upon looking at the evidence and facts presented by the plaintiff at the hearing.

17. Defendant Drown uses the Tier system to systematically abuse prisoner's at Tier III hearings. He has a 100 percent conviction rate. Defendant Drowns motto is "[t]he guards are never wrong. Fair and impartial hearings are never conducted fairly, though they give the appearances that they are.

18. Plaintiff never asked for any "money," "goods," or "services," from the person he was contacting. Furthermore the letter in question was never received by the intended recipient, but returned to the plaintiff has unclaimed. Prison guard Vincent violated the state directives by reading the contents of incoming mail, without prior authorization of the superintendent. Defendant Drown still found the plaintiff guilty. This plaintiff never asked for any services, goods, from the recipient of his missive.

19. Plaintiff Keith Haywood, will seek the following relief;

a. Expungement of the July 15, 2004 Tier. III hearing from the plaintiff's institutional and disciplinary records;

b. Punitive damages in the amount of SIX THOUSAND DOLLARS ($6,000.00.), to prevent this conduct in the future;

c. Reimbursement of the mandatory $5.00. surcharge; and

d. The cost as well as attorney fees to bring this action and whatever relief this Court deems, just, fair and appropriate.

Dated: July 19th, 2005
Attica, New York

KEITH HAYWOOD,
#90-T-3704
Plaintiff, Pro se.
Attica Corr. Facility
P.O. Box 149
Attica, N.Y. 14011-0149

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

-------------------------------------x

KEITH HAYWOOD,

Plaintiff,

– against –

PAT SMITH, et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS/OR CHANGE VENUE

Index No.: 36665/05

-------------------------------------x

STATE OF NEW YORK)
) SS.:
COUNTY OF WYOMING)

KEITH HAYWOOD, being duly sworn under the penalty of perjury states the following;

1. I am the above named plaintiff appearing before the Court under the status of pro se.

2. I make this affidavit in opposition to the defendant's motion to dismiss and/or change of venue.

3. This plaintiff is currently incarcerated at the Attica Correctional Facility, located within the County of Wyoming.

4. The issue at bar, is whether the plaintiff has standing to bring an action in State Supreme Court under the Federal Statute of Section 42 U.S.C.A. §1983, or in the interim, that the case should be transferred to Clinton County due to any hardship on witnesses and defendants.

5. First, the holdings of the Third Department ("3rd Dept."), are not binding or controlling within the Fourth Department (4th Dept). This Court is bound only by the 4th Dept. holdings, and all of the State Courts, both Supreme and all four Appellate Divisions are thus bound by any landmark decisions from the State Court of Appeals. Likewise, all State and Federal Courts are strictly bound by all and [a]ny decisions made by the U.S. Supreme Court, throughout the union States respectfully.

6. It is black letter law, under the U.S. Supreme Court holdings, both federal and [a]ll union state courts share concurrent jurisdiction over all federal claims.

7. This concurrent jurisdiction was the legislative intent of the U.S. Congress. (See, Yellow Freight System, Inc. v. Donnelly, 110 S.Ct 1566 at 1567, 1568, and 1570. (1990); Colondres v. Scoppetta, 290 F.Supp.2d 376 at 380-381 (2003 EDNY).

8. Under the Supremacy Clause, state law is preempted whenever it "contradicts or interferes with an Act of Congress." (Hayfield Northern R.R. Co. v. Chicago & N.W. Transp. Co., 467 U.S. 622,

627, 104 S.Ct. 2610, 2614, 81 L.Ed.2d. 527 (1984); See also, Rose v. Arkansas State Police, 479 U.S. 1, 3, 107 S.Ct. 334, 335, 93 L.Ed.2d 183 (1986). "Federal law preempts state law not only where the two are plainly contradictory but also where "the incompatibility between [them] is discernible only through inference." Preemption in this instance will arise when "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Schneidewind v. ANR Pipeline Co., 485 U.S. 239, 300, 108 S.Ct. 1145, 1150-51, 99 L.Ed.2d 316 (1988) (citing Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). (See Ex "A" Rose supra)

9. The purpose of Section 1983 is two fold: to compensate victims and to deter future deprivations of federal constitutional rights. (Owens v. City of Independence, 445 U.S. 622, 651, 100 S.Ct. 1398, 1415, 63 L.Ed.2d 673 (1980). Plaintiff quoting supra entirely from Hankins v. Finnel, 964 F.2d 853 at 861 (8th Cir. 1992).

10. The preemption [doctrine] under the Supremacy Clause may result in any of three ways;

> [F]irst, Congress may in express terms declare its intention to preclude state regulation in a given area. [S]econd, the preemption may be implied when federal law is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulations. [T]hird, state law may be

> preempted to the extent that it actually conflicts with a valid federal statute. [emphasis [ ] added].

(See, Colondres v. Scoppetta, 290 F.Supp.2d 376 at 380-81, citing Bedford Affiliates v. Sills, 156 F.3d 416, 426 (2d Cir. 1998).

11. The Colondres Court went on to note that . . "conflict preemption occurs where "compliance with both state and federal regulations is a physical impossibility" or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress . . . ." (citing U.S. Supreme Court holdings under Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992). "[C]ourts should not lightly infer preemption." (See, Ex. "B" Colondres supra)

12. Therefore this Court of general subject matter jurisdiction, has jurisdiction over federal claims, under the federal statutes, and state law that is in total conflict, such as Correction Law (Corr. L) §24, [m]ust give way to the federal claims.

13. As Justice Scalia and Kennedy has stated;

> "State courts have jurisdiction over federal causes of action not because it is "conferred" upon them by Congress; nor even because their inherent powers permit them to entertain transitory causes of action arising under the laws of

> foreign sovereigns see, e.g., McKenna v. Fisk, 1 How. 241 247-249, 11 L.Ed. 117 (1843);
>
> but because "[t]he laws of the United States are laws in the Several states, and just as much binding on the citizens and Courts thereof as the state laws are . . . . the two together form one system of jurisprudence." See, Tafflin v. Levitt, 110 S.Ct. 792 at 800-801.

14. Furthermore, Corr. L. §24, is not a complete immunity granting statute. The Supreme Court of New York can hear §1983 claims against any other state officials or citizens, except correctional employees of DOCS. One can surely make the argument that Corr. L. §24 main purpose is to discriminate against federal claims in state court against [j]ust DOCS employees. It should be interesting to note, that Corr. L. §24 only bars §1983 in state courts only. You can still file a §1983 in federal court against the same DOCS employees. Therefore the statute is discriminatory against federal claims being brought in state court. It doesn't bar federal claims under §1983 from being heard in federal court against DOCS employees, [j]ust state court.

15. The unanimous Second Department decision in Schulman v. Chase Manhattan Bank, 710 N.Y.S.2d 368 at 371-372 (A.D.2 Dept. 2000), followed the [e]xpress [h]oldings of the U.S. Supreme Court, the Supremacy Clause, and the U.S. Constitution.

The Clinton County Supreme court made the same determination prior to the recent 3rd Dept ruling. (See, Ex. "C" Schulman supra; and Ex. "D" Clinton County Supreme court decision on the Supremacy Clause, following the holdings of the U.S. Supreme Court, not the 3rd Dept.)

16. This plaintiff previously filed an Article §78 against this court for refusing to accept the plaintiff's papers for filing. Though it was later determined in the respondents papers that the proper party should have been the Clerk of the court, the 4th Dept. [a]fter reading the plaintiff/petitioners papers, and recognizing the claims were for federal statutes and upon reading the express holdings of the U.S. Supreme Court within the plaintiff/petitioners exhibits, ordered this court to accept the plaintiff/petitioners papers for filing and further proceedings. (Haywood v. Dadd, 4th Dept. 2005/A.D. # OP 05-2062; OAG No.: 05-029828-Al.).

17. Had the 4th Dept. determined in concurrence with the reasons given by the Clerk for rejecting this action, the action would have been decided by a sua sponte determination by that court, that the plaintiff lacked standing to file such claims in state court. However that was not the case.

18. Nevertheless Your Honor, this court [m]ust respectfully, follow the strict [h]oldings of the U.S. Supreme Court.

* * *

Dated: December 19, 2005
Attica, New York

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

X

KEITH HAYWOOD,

Plaintiff,

- against -

PAT SMITH, Civilian Supt; STEVE JENNETT, Prison Guard Lieutenant; P. DEVLIN, Prison Guard Sergeant; M. CORYER, Prison Guard; and D. BOUVIER, Prison Guard,

Defendants.

X

AMENDED
PLAINTIFF'S
VERIFIED
FEDERAL
LAW COMPLAINT
FOR PUNITIVE
DAMAGES UNDER
TITLE 42 U.S.C.A.
§1983/TOGETHER
WITH STATE [N.Y.]
CONSTITUTIONAL
COMMON LAW
CLAIMS

INDEX No.: 36665

SUBJECT MATTER JURISDICTION

1. This Court has general jurisdiction over all state claims as well as federal law claims under 42 U.S.C.A. §1983, for damages against all named defendant(s) who violated the plaintiff's Civil Rights,

while acting under the Color of State Law. Furthermore, this federal law claim is being filed under the Supremacy Clause of the United States Constitution. (See, Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302 (1988); and Cavanaugh v. Doherety, 243 A.D.2d 92 (1998). The Court is especially directed to Howlett v. Rose, 496 U.S. 356 (1990). The state law does not have the power to confer immunity on federal claims. This Court is fully competent to provide the remedies the federal statute requires. id 378-379. Plaintiff's state law claims are allowed in accordance to Morris v. Eversley, 205 F.S.2d 234 (SDNY 2002).

* * *

Dated: December 29, 2005
Attica, New York

KEITH HAYWOOD,
#90-T-3704
Plaintiff, Pro se.
Attica Corr. Facility
P.O. Box 149
Attica, N.Y. 14011-0149
(716) 591-2000

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

KEITH HAYWOOD,

Plaintiff,

- against -

CURTIS DROWN,
Civilian
Hearing Officer,

Defendant.

AMENDED PLAINTIFF'S VERIFIED FEDERAL LAW COMPLAINT FOR PUNITIVE DAMAGES UNDER TITLE 42 USCA §1983

INDEX No.: 36664

SUBJECT MATTER JURISDICTION

1. This Court has general jurisdiction over all state claims as well as federal law claims under 42 U.S.C.A. §1983, for damages against all named defendant(s) who violated the plaintiff's Civil Rights, while acting under the Color of State Law. Furthermore, this federal law claim is being filed under the Supremacy Clause of the United States Constitution. (See, Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302 (1988); and Cavanaugh v. Doherety, 243 A.D.2d 92 (1998). The Court is especially directed to Howlett v. Rose, 496 U.S. 356 (1990). The state law does not have the power to confer

immunity on federal claims. This Court is fully competent to provide the remedies the federal statute requires. id 378-379. Plaintiff's state law claims are allowed in accordance to Morris v. Eversley, 205 F.S.2d 234 (SDNY 2002).

* * *

Dated: December 29, 2005
Attica, New York

KEITH HAYWOOD,
#90-T-3704
Plaintiff, Pro se.
Attica Corr. Facility
P.O. Box 149
Attica, N.Y. 14011-0149
(716) 591-2000

At a term of the Supreme Court
held in and for the County of
Wyoming, at the Courthouse in
Warsaw, New York, on the 1st
day of February, 2006.

HONORABLE MARK H. DADD
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

KEITH HAYWOOD
Plaintiff

ORDER

v.

Index No. 36664/05

CURTIS DROWN
Defendant

The above-named defendant, having moved for an order pursuant to CPLR 3211 dismissing the complaint, and said motion having duly come on to be heard.

NOW, on reading the complaint, and on reading and filing the notice of motion, dated December 27, 2005, supported by the affirmation of Stephen F. Gawlik, Assistant Attorney General, dated December 27, 2005, and it appearing that the complaint must be dismissed in accordance with Woodward v. State of New York (__ A.D.2d __, 803 N.Y.S.2d 776 [2005]).

NOW, THEREFORE, it is hereby **ORDERED** that the motion is granted and the complaint is dismissed.

DATED: February 1, 2006

At a term of the Supreme Court
held in and for the County of
Wyoming, at the Courthouse in
Warsaw, New York, on the 1st
day of February, 2006.

HONORABLE MARK H. DADD
Acting Supreme Court Justice

KEITH HAYWOOD
Plaintiff

ORDER

v.

Index No. 36665/05

PAT SMITH, et al
Defendants

The above-named defendant, having moved for an order pursuant to CPLR 3211 dismissing the complaint, and said motion having duly come on to be heard.

NOW, on reading the complaint, and on reading and filing the notice of motion, dated November 29, 2005, supported by the affirmation of Stephen F. Gawlik, Assistant Attorney General, dated November 29, 2005, together with the annexed exhibits, and the opposing affidavit of Keith Haywood, sworn to on December 19, 2005, together with the annexed exhibits, and due deliberation having been had, and it appearing that the complaint must be dismissed in accordance with

Woodward v. State of New York (__ A.D.2d __, 803 N.Y.S.2d 776 [2005]).

NOW, THEREFORE, it is hereby **ORDERED** that the motion is granted and the complaint is dismissed.

DATED: February 1, 2006

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

KEITH HAYWOOD,	:	
Plaintiff,	:	NOTICE OF APPEAL
– against –	:	
PAT SMITH, et al.,	:	
Defendant(s):		Index No.: 36665/05

S I R S:

PLEASE TAKE NOTICE, that the above named plaintiff hereby appeals to the Appellate Division of the Fourth Department from an Order entered in the office of the Clerk of the Supreme Court, Wyoming County on or about February 6, 2006, which dismissed plaintiff's federal causes of actions filed under the U.S. Supremacy Clause. This appeal is taken from that part of the Order dismissing plaintiff's complaint under Woodward v. State of New York, 803 N.Y.S.2d 776 (2005), under Correction Law §24, as well as the whole thereof.

Dated: February 10, 2006
Attica, New York

STATE OF NEW YORK

SUPREME COURT : COUNTY OF WYOMING

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KEITH HAYWOOD,

Plaintiff, : NOTICE OF APPEAL

– against –

CURTIS DROWN,

Defendant(s): Index No.: 36664/05

-----------------------------------x

SIRS:

PLEASE TAKE NOTICE, that the above named plaintiff hereby appeals to the Appellate Division of the Fourth Department from an Order entered in the office of the Clerk of the Supreme Court, Wyoming County on or about February 6, 2006, which dismissed plaintiff's federal causes of actions filed under the U.S. Supremacy Clause. This appeal is taken from that part of the Order dismissing plaintiff's complaint under Woodward v. State of New York, 803 N.Y.S.2d 776 (2005), under Correction Law §24, as well as the whole thereof.

Dated: February 10, 2006
Attica, New York

Keith Haywood, Plaintiff-Appellant, v Curtis Drown, Defendant-Respondent.

Keith Haywood, Plaintiff-Appellant, v Pat Smith, Et Al., Defendants-Respondents.

DOCKET NOS. CA 06-00601 AND CA 06-00602

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

PIGOTT, JR., P.J., HURLBUTT, SCUDDER, KEHOE, AND GORSKI, JJ.:

Appellant having moved to consolidate the appeals taken from orders of the Supreme Court entered in the Office of the Clerk of the County of Wyoming on February 6, 2006, and for permission to proceed as a poor person,

Now, upon reading and filing the affidavit of Keith Haywood sworn to February 17, 2006, the notice of motion with proof of service thereof, and due deliberation having been had thereon,

It is hereby ORDERED that the motion be, and the same hereby is, granted, appellant may proceed as a poor person, and the appeals from the orders entered February 6, 2006 are hereby consolidated for the purposes of perfecting and arguing the appeals.

Entered: April 5, 2006 JoAnn M. Wahl
Clerk of the Court

Keith Haywood, Plaintiff-Appellant, v Curtis Drown, Defendant-Respondent.

1661 CA 06-00601

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

SCUDDER, P.J., MARTOCHE, CENTRA, AND PINE, JJ.:

Plaintiff, a prisoner at Attica Correctional Facility, commenced an action against a civilian employee of the Department of Correctional Services (DOCS) who serves as a prison disciplinary hearing officer, and plaintiff commenced a second action against various prison guards and supervisory personnel employed by DOCS. In both actions, plaintiff seeks damages from the DOCS employees based on their alleged tortious conduct committed in violation of plaintiff's federal and state constitutional rights. Contrary to plaintiff's contention, Supreme Court properly granted the motion of the defendant in the first action and the motion of the defendants in the second action for dismissal of the respective complaints pursuant to *CPLR 3211* and *Correction Law § 24*. According to the allegations of the complaints, defendants' conduct is encompassed by *Correction Law § 24*. That statute, however, precludes plaintiff from suing DOCS employees, "in [their] personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the[ir] employment and in the discharge of the[ir] duties" (*§ 24 [1]*; *see Gore v Kuhlman, 217 A.D.2d 890, 891, 630 N.Y.S.2d 141*; *see also Woodward v State of New York, 23 AD3d 852, 855-856, 805 N.Y.S.2d 670, lv dismissed 6 N.Y.3d 807, 845 N.E.2d 1276, 812 N.Y.S.2d 445*). We further reject plaintiff's contention that *Correction Law § 24* is preempted by federal law, particularly the *Supremacy Clause of the United States Constitution* and *42 USC § 1983*, and that the court therefore erred in dismissing plaintiff's federal civil rights claims in the first action and his federal civil rights cause of action in the second action (*see Woodward, 23 AD3d at 853-855*; *Cepeda v Coughlin, 128 A.D.2d 995, 997, 513 N.Y.S.2d 528, lv denied 70 N.Y.2d 602, 512 N.E.2d 550, 518 N.Y.S.2d 1024*; *see also Martinez v California, 444 U.S. 277, 284 n 7, 100 S. Ct. 553, 62 L. Ed. 2d 481, reh denied 445 U.S. 920, 100 S. Ct. 1285, 63 L. Ed. 2d 606*; *cf. Howlett v Rose, 496 U.S. 356, 372-375, 110 S. Ct. 2430, 110 L. Ed. 2d 332*).

It is hereby ORDERED that the order so appealed from be and the same hereby is unanimously affirmed without costs.

Entered: December 22, 2006

JOANN M. WAHL
Clerk of the
Court

Keith Haywood, Plaintiff-Appellant, v Pat Smith, et al., Defendant-Respondents.

1662 CA 06-00602

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

SCUDDER, P.J., MARTOCHE, CENTRA, AND PINE, JJ.:

Appeal from an order of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered February 6, 2006. The order granted defendants' motion to dismiss the complaint.

It is hereby ORDERED that the order so appealed form be and the same hereby is unanimously affirmed without costs.

Same Memorandum as in *Haywood v. Drown* ([appeal No. 1] _____ AD3d _____ [Dec. 22, 2006]).

Entered: December 22, 2006

JoAnn M. Wahl
Clerk of the
Court

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FOURTH DEPARTMENT

--x

KEITH HAYWOOD, Plaintiff-Appellant, – against – CURTIS DROWN Defendant-Appellee	CONSOLIDATED NOTICE OF APPEAL AS OF RIGHT UNDER CPLR §5601(b)(2)

--x

KEITH HAYWOOD

Plaintiff-Appellant,

– against –

PAT SMITH, et al.,

Defendant-Appellee

--x

SIR/MADAME:

PLEASE TAKE NOTICE, that the above named plaintiff hereby appeals to the Court of Appeals, from an Order of the Fourth Department entered on December 22, 2005, with Notice of Entry dated December 27, 2006, and served upon the plaintiff by ordinary first class mail thereafter. This appeal challenges the States statutory law under Correction Law §24, which conflicts with the U.S. Federal Statute under Title 42 U.S.C.A. §1983. This appeal is being made as of right under CPLR §5601(b)(2).

Dated: January 18, 2007
Attica, New York

NEW YORK STATE
COURT OF APPEALS

Preliminary Appeal Statement
Pursuant to section 500.9 of the Rules of the Court of Appeals

1. CAPTION OF CASE (as the parties should be denominated in the Court of Appeals):

STATE OF NEW YORK COURT OF APPEALS

KEITH HAYWOOD,
Appellant,

CONSOLIDATED ACTION NO. 2

- against -

PAT SMITH, et al.,
Respondents.

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2. Name of court or tribunal where case originated, including county, if applicable:

Wyoming Supreme Court/County of Wyoming

3. Civil index number, criminal indictment number or other number assigned to the matter in the court or tribunal of original instance: 36665/05

4. Docket number assigned to the matter at the Appellate Division or other intermediate appellate court: CA 06-00602

5. Jurisdictional basis for this appeal:
    _____ Leave to appeal granted by the Court of Appeals or a Judge of the Court of Appeals
    _____ Leave to appeal granted by the Appellate Division or a Justice of the Appellate Division
    _____ CPLR 5601(a): dissents on the law at the Appellate Division
    _____ CPLR 5601(b)(1): constitutional ground (Appellate Division order).
    __X__ CPLR 5601(b)(2): constitutional ground (judgment of court of original instance)
    _____ CPLR 5601(c): Appellate Division order granting a new trial or hearing, upon stipulation for judgment absolute
    _____ CPLR 5601(d): from a final judgment, order, determination or award, seeking review of a prior nonfinal Appellate Division order
    _____ Other (specify) ____________________

* * *

12. Set forth, in point-heading form, issues proposed to be raised on appeal (this is a nonbinding designation, for preliminary issue identification purposes only):

ARGUMENT

POINT I

CURRENT HOLDINGS OF THE US SUPREME COURT STATES THAT NO STATE CAN BAR A

42 USCA 1983 CLAIM, UNLESS THE STATE COURT DOES NOT HAVE PROCEDURES TO HEAR SAID CLAIMS UNDER FEDERAL LAW.

POINT II

THE MATTER IN THE INTEREST OF JUSTICE SHOULD HAVE BEEN TRANSFERRED TO THE APPROPRIATE COURT.

(use additional sheet, if necessary)

13. Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?

_X_ yes ______ no

If yes, set forth a concise statement why appellant believes that consideration pursuant to section 500.11 is appropriate (see section 500.11[b]):

The only issues to be addressed is the current statutory law of corrections Law Section 24, which illegally grants immunity against federal claims brought in state supreme court, only to State Department of Correctional Services employees. However, the Supreme Court can hear 42 USCA 1983 claims for money damages against any other person in the State. It, however, cannot hear said claims against these particular group of employees. Also, the matter should have been transferred to the appropriate Court in the interest of justice, instead of dismissal.

14. Notice to the Attorney General.

Is any party to the appeal asserting that a statute is unconstitutional? _X____ yes ______ no

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? _X_ yes
___ no
The case is based on this. Notice also given in "Notice of Appeal"

* * *

Date: February 1, 2007

Submitted by______,
pro se
(Signature of
appellant)

KEITH HAYWOOD
(Typed/printed name
of self-represented
appellant)

NEW YORK STATE
COURT OF APPEALS

Preliminary Appeal Statement

Pursuant to section 500.9 of the Rules of the Court of Appeals

1. CAPTION OF CASE (as the parties should be denominated in the Court of Appeals):

STATE OF NEW YORK COURT OF APPEALS

KEITH HAYWOOD,
Appellant,

CONSOLIDATED ACTION NO. 1

- against -

CURTIS DROWN,
Respondent.

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2. Name of court or tribunal where case originated, including county, if applicable:

Wyoming Supreme Court/County of Wyoming

3. Civil index number, criminal indictment number or other number assigned to the matter in the court or tribunal of original instance: 36665/05

4. Docket number assigned to the matter at the Appellate Division or other intermediate appellate court: CA 06-00601

5. Jurisdictional basis for this appeal:
   _____ Leave to appeal granted by the Court of Appeals or a Judge of the Court of Appeals
   _____ Leave to appeal granted by the Appellate Division or a Justice of the Appellate Division
   _____ CPLR 5601(a): dissents on the law at the Appellate Division
   _____ CPLR 5601(b)(1): constitutional ground (Appellate Division order).
   __X__ CPLR 5601(b)(2): constitutional ground (judgment of court of original instance)
   _____ CPLR 5601(c): Appellate Division order granting a new trial or hearing, upon stipulation for judgment absolute
   _____ CPLR 5601(d): from a final judgment, order, determination or award, seeking review of a prior nonfinal Appellate Division order
   _____ Other (specify) ____________________

* * *

12. Set forth, in point-heading form, issues proposed to be raised on appeal (this is a nonbinding designation, for preliminary issue identification purposes only):

ARGUMENT

POINT I

CURRENT HOLDINGS OF THE US SUPREME COURT STATES THAT NO STATE CAN BAR A

42 USCA 1983 CLAIM, UNLESS THE STATE COURT DOES NOT HAVE PROCEDURES TO HEAR SAID CLAIMS UNDER FEDERAL LAW.

POINT II

THE MATTER IN THE INTEREST OF JUSTICE SHOULD HAVE BEEN TRANSFERRED TO THE APPROPRIATE COURT.

(use additional sheet, if necessary)

13. Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?

X yes ______ no

If yes, set forth a concise statement why appellant believes that consideration pursuant to section 500.11 is appropriate (see section 500.11[b]):

The only issues to be addressed is the current statutory law of Corrections Law Section 24, which illegally grants immunity against federal claims brought in State Supreme Court, only to State Department of Correctional Services employees. However, the Supreme Court can hear 42 USCA 1983 claims for money damages against any other person in the State. It, however, cannot hear said claims against these particular group of employees. Also, the matter should have been transferred to the appropriate Court in the interest of justice, instead of dismissal.

14. Notice to the Attorney General.

Is any party to the appeal asserting that a statute is unconstitutional? _X____ yes ______ no

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? _X_ yes ___ no
The case is based on this. Notice also given in "Notice of Appeal"

* * *

Date: February 1, 2007

Submitted by______,
pro se
(Signature of
appellant)

KEITH HAYWOOD
(Typed/printed name
of self-represented
appellant)

Keith Haywood, Appellant, v Curtis Drown, Respondent.

No. 146

COURT OF APPEALS OF NEW YORK

GRAFFEO, J.:

Pursuant to *Correction Law § 24*, New York courts lack jurisdiction under state or federal law to entertain civil actions seeking money damages against correction officers. The issue in this case is whether *section 24* violates the *Supremacy Clause of the United States Constitution* because state courts cannot adjudicate federal *42 USC § 1983* causes of action alleging violations of civil rights. We hold that the statute is not unconstitutional.

I

Plaintiff Keith Haywood was sentenced as a second violent felony offender to a 15-to-30 year term of imprisonment after being convicted in 1990 of escape in the first degree and eight counts of robbery in the first degree[1]. While incarcerated at the Attica Correctional Facility, plaintiff was the subject of two misbehavior reports in June 2003, one for assaulting a correction officer and the other for failing a urinalysis test. After separate administrative hearings, plaintiff was found guilty of both disciplinary charges. About a year later, another misbehavior report was issued charging plaintiff with improper mail solicitation. A hearing officer determined that plaintiff was guilty of that charge.

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[1] *See People v Haywood, 184 AD2d 450, 450, 585 N.Y.S.2d 415 (1st Dept 1992), lv denied 80 NY2d 904, 602 N.E.2d 238, 588 N.Y.S.2d 830 (1992).*

In the aftermath of these disciplinary findings, plaintiff commenced two unrelated, pro se civil actions in state Supreme Court premised on *42 USC § 1983* against employees of the state Department of Correctional Services (DOCS)[2]. The first complaint alleged that defendant Curtis Drown, the DOCS hearing officer who found plaintiff guilty of improper mail solicitation, failed to conduct a fair and impartial hearing, that his determination was based on insufficient evidence and that the penalty imposed was intended to censor plaintiff in violation of the *First Amendment*. Asserting that his federal civil rights had been impaired, plaintiff sought expungement of the misbehavior charge, punitive damages and attorneys' fees under *42 USC § 1983.*[3]

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[2] Plaintiff has also filed other pro se complaints during his term of confinement (*see e.g. Kollar & Haywood v Conagra Foods Retail Prods. Co.*, 07 CV 0130, 2007 WL 1371105 [WD NY 2007] [complaint regarding ingestion of allegedly tainted peanut butter]; *Haywood v Republic Tobacco Co.*, 05 CV 842A, 2007 U.S. Dist. LEXIS 25792, 2007 WL 1063004, *1 [WD NY 2005] [complaint alleged exposure to second-hand cigarette smoke]; *Haywood v Nabisco Inc.*, 2005 WL 3523467 [Sup Ct, NY County, 2005] [complaint asserted that a "Chip's Ahoy" cookie contained a penny that cracked his tooth]; *Haywood v Kochler, 78 F3d 101, 103 [2d Cir 1996]* [complaint of use of excessive force]; *Haywood v Hudson, CV 90 3287, 1994 U.S. Dist. LEXIS 877, 1994 WL 36388, *1 [ED NY 1994]* [complaint of use of excessive force]).

Plaintiff's second lawsuit was filed against defendant Pat Smith, a DOCS hearing officer, two correction officers and two of their superior officers. According to plaintiff, he had been grabbed from behind without justification by one of the correction officers and sustained a "minor injury to his left pinkie finger." He claimed that the correction officer involved in the incident had conspired with his superiors to fabricate the facts set forth in his June 2003 misbehavior report. Plaintiff further alleged that the urinalysis test conducted in June 2003 had been tampered with by DOCS employees. The complaint, relying on *42 USC § 1983*, accused defendants of conspiring to violate plaintiff's federal civil rights by assaulting him without cause, creating a false misbehavior report, tampering with his urinalysis test and denying him a fair and impartial hearing.[4]

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[3] This federal statute provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

[4] The complaint also asserted a second cause of action based on an alleged violation of plaintiff's state constitutional rights.

The defendants in both actions, represented by the Office of the Attorney General pursuant to *Public Officers Law § 17*, moved to dismiss the complaints on the ground that plaintiff's claims -- both state and federal -- were barred by *Correction Law § 24*. This statute provides, in pertinent part:

> "1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department [of corrections], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> "2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state."

Supreme Court dismissed both complaints on this statutory basis, citing Woodward v State of New York (23 AD3d 852, 805 N.Y.S.2d 670 [3d Dept 2005], lv dismissed 6 NY3d 807, 845 N.E.2d 1276, 812 N.Y.S.2d 445 [2006]). The Appellate Division affirmed, concluding that section 24 did not violate the Supremacy Clause of the United States

Constitution. Plaintiff appeals as of right and we now affirm.

II

Plaintiff contends that when Congress enacted *42 USC § 1983*, it imposed a national policy that was intended to allow persons who are injured by others acting under color of law to seek judicial redress. He claims that by prohibiting *section 1983* actions for money damages, *Correction Law § 24* impermissibly discriminates against the federal cause of action contrary to the purpose of the *Supremacy Clause*[5]. Defendants submit that there is no constitutional violation because the states are free to limit the subject matter jurisdiction of their courts. They maintain that *section 24* treats all state and federal monetary claims identically since none can be brought against a correction officer personally and, therefore, *section 24* does not discriminate against a federal cause of action in favor of a state cause of action.

The Supremacy Clause declares that the

> "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be

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[5] Plaintiff's alternative claim, that the statute merely indemnifies correction officers, was not raised in Supreme Court and is therefore unpreserved.

> the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" (*US Const, art VI, cl 2*).

In the event of a conflict between federal and state law, the *Supremacy Clause* preempts operation of state law because when Congress adopts an act it speaks " 'for all the people and all the States, and thereby establishe[s] a policy for all. That policy is as much the policy of [the State] as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State' " (*Howlett v Rose, 496 U.S. 356, 371, 110 S. Ct. 2430, 110 L. Ed. 2d 332 [1990]*, quoting *Mondou v New York, N.H. & H.R. Co., 223 U.S. 1, 57, 32 S. Ct. 169, 56 L. Ed. 327 [1912]*; *see e.g. Testa v Katt, 330 U.S. 386, 393, 67 S. Ct. 810, 91 L. Ed. 967 [1947]*). Thus, under the *Supremacy Clause*, "[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law" (*Felder v Casey, 487 U.S. 131, 138, 108 S. Ct. 2302, 101 L. Ed. 2d 123 [1988]* [internal quotation marks omitted]).

The alleged conflict between federal and state law in this case arises from the fact that, although a claim based on *42 USC § 1983* for monetary damages against government officials in their personal capacity can generally be asserted in a New York court (*see generally Will v Michigan Dept. of State Police, 491 U.S. 58, 66, 109 S. Ct. 2304, 105 L. Ed. 2d 45 [1989]*), *Correction Law § 24* restricts a state court from exercising jurisdiction over such a cause of action if it involves DOCS employees. At first glance, this prohibition appears questionable under the *Supremacy Clause* since the United States Supreme Court has cautioned that "[c]onduct by persons acting under of color of state law which is wrongful under *42 USC § 1983* . . . cannot be immunized by state law" and that a "construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise" (*Martinez v California, 444 U.S. 277, 284, 100 S. Ct. 553, 62 L. Ed. 2d 481 n 8 [1980]* [internal quotation marks omitted]).

Upon closer scrutiny, however, the *Supremacy Clause* imposes no constitutional impediment to the operation of *Correction Law § 24*. The *Supremacy Clause* gives states the power to deny enforcement of a federal right if they have a " 'valid excuse' " for doing so (*Howlett, 496 U.S. at 369*, quoting *Douglas v New York N.H. & H.R. Co., 279 U.S. 377, 387-388, 49 S. Ct. 355, 73 L. Ed. 747 [1929]*). One permissible exception is when a state court lacks jurisdiction due to a "neutral state rule regarding the administration of the courts" (*Howlett, 496 U.S. at 372*). The Supreme Court has explained that states "have great latitude to establish the structure and jurisdiction of their own courts" and that Congress must "take[] the state courts as it finds them" (*id.* [internal quotation marks omitted]; *see also Brown v Gerdes, 321 U.S. 178, 189, 64 S. Ct. 487, 88 L. Ed. 659 [1944]* [Frankfurter, J., concurring] ["[t]he Constitution does not require New York to give jurisdiction to its courts against its will"]; *National Private Truck Council Inc. v Oklahoma Tax Commn., 515 U.S. 582, 587, 115 S. Ct. 2351, 132 L. Ed. 2d 509 n 4 [1995]*).

A corollary to this principle is that a state rule will be deemed "neutral" and "valid" if it does not discriminate against federal claims in favor of analogous state claims (*see McKnett v St. Louis & San Francisco Ry. Co., 292 U.S. 230, 233-234, 54 S. Ct. 690, 78 L. Ed. 1227 [1934]*). In other words, if the same type of claim, "arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim" (*Martinez v California, 444 U.S. at 283-284 n 7*). Ultimately, what the *Supremacy Clause* prohibits is refusal by a state court to entertain a suit for the sole reason that the cause of action arises under federal law (*see Howlett, 496 U.S. at 373*, quoting *McKnett, 292 U.S. at 233-234*; *Murnan v Wabash Ry. Co., 246 NY 244, 247, 158 N.E. 508 [1927]*).

Thus, the policy underlying the *Supremacy Clause* is to maintain an equilibrium between state and federal causes of action: if a state court opens its doors to a state cause of action, it must also allow related federal claims to be heard; but if the state does not hear a particular state claim, it may also decline to consider related federal causes of action in its state courts (*see generally Missouri ex rel. S. Ry. Co. v Mayfield, 340 U.S. 1, 4, 71 S. Ct. 1, 95 L. Ed. 3 [1950]*). As a result, if a state permits a litigant to assert a state cause of action, it cannot use a sovereign immunity defense to defeat a *section 1983* action premised on the same offending conduct (*see Howlett, 496 U.S. at 379-381*). But if a state does not extend jurisdiction to its courts to litigate a certain type of claim, it may deprive those courts of jurisdiction over a related federal claim. In that situation, there is no Supremacy Clause violation because there is no discrimination against the federal claim in favor of similar state claims (*see e.g. McKnett, 292 U.S. at 233-234*). And it follows that if the jurisdiction of a state court does not embrace a certain claim, a litigant cannot evade that rule by raising the same state claim in federal court under the doctrine of pendent jurisdiction (*see Baker v Coughlin, 77 F3d 12, 15 [2d Cir 1996]*). The equality requirement of the *Supremacy Clause* is satisfied in each of these situations because litigants stand on the same footing -- regardless of whether they choose to invoke the authority of a state or federal court -- and there is no incentive to engage in the repudiated practice of forum shopping that "frequently and predictably produce[s] different outcomes in federal civil rights litigation based solely on whether that litigation takes place in state or federal court" (*Felder v Casey, 487 U.S. at 141*).

Applying these precepts, we cannot say that *Correction Law § 24* violates the *Supremacy Clause*. The statute, by emphasizing that "[n]o civil action shall be brought in any court of the state," creates a neutral jurisdictional barrier to all claims -- state and federal -- for monetary damages in a state court against any correction officer in his or her personal capacity for actions within the scope of employment. *Section 24*, therefore, does not discriminate against *section 1983* actions" 'solely because the suit is brought under a federal law' "(*Howlett, 496 U.S. at 373*, quoting *McKnett, 292 U.S. at 233-234*; *see Murnan v Wabash Ry. Co., 246 NY at 247*) -- it applies with equal force to all state and federal claims based on the identity of the defendant[6] and the alleged conduct at issue (*see Woodward v State of New York, 23 AD3d at 854*; *Cepeda v Coughlin, 128 AD2d 995, 997, 513 N.Y.S.2d 528 [3d Dept 1987], lv denied 70 NY2d 602, 512 N.E.2d 550, 518 N.Y.S.2d 1024 [1987]*; *cf. Meehan v Illinois Power Co., 347 Ill App 3d 761, 767, 808 NE2d 555, 562, 283 Ill. Dec. 589 [Ct App 2004]* [no Supremacy Clause violation regarding refusal to permit claims based on federal age discrimination statute because "[a]ll cases involving age discrimination, whether based on federal law or state law, are barred from Illinois circuit courts"], *lv denied 211 Ill 2d 582, 823 NE2d 967, 291 Ill. Dec. 381 [2004]*). Put simply, because *Correction Law § 24* does not treat *section 1983* claims differently than it treats related state law causes of action, the *Supremacy Clause* is not offended.[7]

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[6] *Section 24* operates without regard to the identity of the plaintiff, such as when a correction officer seeks to sue his superior officers for civil rights violations (*see Woodward v State of New York, 23 AD3d at 853*).

[7] Cases such as *Howlett* and *Felder*, relied upon by plaintiff and the dissent, are distinguishable from this case. In *Howlett*, for example, the state provided an immunity defense to the *section 1983* action that did not apply to related state law claims and that would not have been available if the action had been commenced in federal court (*see 496 U.S. at 359, 364*).

Nor does the fact that a plaintiff can sue the state directly in the Court of Claims alter our analysis. Ordinarily, a state cannot be sued under *42 USC § 1983* because states are not considered to be "persons" within the purview of the federal statute (*see Will v Michigan Dept. of State Police, 491 U.S. at 65*). Although states are excluded from *section 1983* liability, the New York Legislature has recognized that the State of New York is, in effect, the real party in interest when there is a challenge to a correction officer's alleged conduct arising from the discharge of official duties. As a result, the state provides representation and indemnification for correction officers sued for conduct occurring within the scope of employment (*see Public Officers Law § 17 [2], [3]*). *Section 24 (2)* further reflects this assumption of responsibility by allowing for the recovery of certain damages against the state in the Court of Claims[8]. *Correction Law § 24* therefore creates an exclusive forum for plaintiffs seeking redress of claims against the state -- the Court of Claims -- despite the absence of jurisdiction in state courts to entertain claims of civil rights violations against those employees directly. By restricting the forum for a certain type of

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Similarly, in *Felder*, state law imposed a notice of claim requirement on *section 1983* claims that would not apply if the action had been initiated in federal court (*see 487 U.S. at 141*). In both cases, the state laws upset the equilibrium the *Supremacy Clause* was designed to maintain and were therefore unconstitutional.

[8] New York's waiver of sovereign immunity is conditioned on submission to the exclusive jurisdiction of the Court of Claims (*see NY Const, art VI, § 9; Court of Claims Act § 8*).

claim to a particular state court, the Legislature did nothing more than exercise its prerogative to establish the subject matter jurisdiction of state courts in a manner consistent with New York's conditional waiver of sovereign immunity, which does not allow civil rights claims to proceed against the state in Supreme Court.

In our view, New York does not discriminate against *section 1983* claims by allowing state, but not federal, actions involving DOCS employees to be adjudicated in the Court of Claims since it was Congress that decided to exempt the states as responsible parties from the purview of the federal statute. Furthermore, federal law acknowledges that states can be sued by individuals only in state courts unless sovereign immunity is waived or abrogated (*see U.S. Const, Amend 11*; *Seminole Tribe of Florida v Florida, 517 U.S. 44, 54, 116 S. Ct. 1114, 134 L. Ed. 2d 252 [1996]*). Moreover, litigants like plaintiff can use the federal courts to pursue *section 1983* claims against individual defendants and seek all of the rights and remedies available under the federal act, although a *section 1983* claim brought against a correction officer in federal court cannot raise analogous, jurisdictionally barred state law claims (*see Baker v Coughlin, 77 F3d at 15*). Thus, when *Correction Law § 24* applies, New York courts necessarily adjudicate only state claims brought against the state and federal courts adjudicate only federal causes of action brought against individuals. In the end, New York does not discriminate against *section 1983* actions in favor of analogous state law claims because *Correction Law § 24* removes subject matter jurisdiction over any cause of action -- state or federal -- for money damages in state Supreme Court for conduct by DOCS employees. Consequently, *section 24* does not violate the *Supremacy Clause.*

Accordingly, the orders of the Appellate Division should be affirmed, without costs.

JONES, J. (dissenting):

The question before this Court is whether *Correction Law § 24* violates the *Supremacy Clause* insofar as it bars litigants from bringing *42 USC § 1983* claims for money damages in state court against DOCS employees for actions committed within the scope of their employment. As interpreted by the majority, *section 24* frustrates the purpose of, and is inconsistent with, *section 1983*. Specifically, *section 24 (1)* burdens the litigation of *section 1983* actions by preventing state courts from adjudicating claims for money damages -- even where such courts have jurisdiction over the parties and the type of claim brought -- while, at the same time, allowing the court to adjudicate state law actions involving the same conduct by DOCS employees; and (2) immunizes a select group of state employees from *section 1983* damages claims where other state employees are not similarly immunized. The majority and the State argue, however, that state courts can decline to exercise their concurrent jurisdiction over *section 1983* money damages claims against DOCS employees because *Correction Law § 24* affords New York State a "valid excuse" (i.e., a neutral rule of judicial administration limiting subject matter jurisdiction) for doing so. I disagree with the majority's conclusion that *section 24* can withstand a Supremacy Clause challenge. Accordingly, I dissent and would reverse the orders of the Appellate Division, reinstate plaintiff's claims and remand both actions to Supreme Court for further proceedings.

I.

Correction Law § 24 (entitled "Civil actions against [DOCS] personnel") states:

> "1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any [such] claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state"

(emphasis added). We have stated that the purpose of *section 24* is to ensure that DOCS employees, when acting within the scope of employment, freely perform their dangerous duties of maintaining safety and security within correctional facilities without fear of being subjected to voluminous, vexatious and, in many cases, meritless suits brought by prisoners and being held personally liable should a prisoner prevail (*see Arteaga v State of New York, 72 NY2d 212, 219, 527 N.E.2d 1194, 532 N.Y.S.2d 57 [1988]*).

The majority opinion provides a detailed description of plaintiff's present claims, and several previous ones (*see* majority op, at 2-4), apparently to suggest that the claims are frivolous, which they may well be. I recognize that the problem of baseless lawsuits by prisoners against corrections officers is a serious one; Congress, however, enacted *section 1983* to deal with an even more serious problem -- i.e., violations of citizens' rights by those acting under the color of state law.

Section 1983 is the current version of section 1 of the Civil Rights Act of 1871, one of the post-Civil War Reconstruction-Era civil rights statutes Congress enacted[9]. *Section 1983* states:

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[9] The purpose of the Civil Rights Act of 1871 was to address the lawlessness in the southern states after the Civil War (*see* Cong. Globe, 42nd Cong., 1st Sess., at 236 [1871]) and to enforce the provisions of the *Fourteenth Amendment* (*see Monroe v Pape, 365 U.S. 167, 171, 81 S. Ct. 473, 5 L. Ed. 2d 492 [1961]*, *overruled by Monell v Department of Social Servs. of City of New York, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 [1978]* [*Monroe* was overruled insofar as it held that local

> "*Every person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, *any citizen of the United States or other person within the jurisdiction thereof* to the deprivation of any rights, privileges, or immunities secured by the Constitution

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governments are wholly immune from suit under *section 1983*]). As the Supreme Court stated: "The [Act] grew out of a message sent to Congress by President Grant on March 23, 1871, reading: 'A condition of affairs now exists in some States of the Union rendering life and property insecure and the carrying of the mails and the collection of the revenue dangerous. The proof that such a condition of affairs exists in some localities is now before the Senate. That the power to correct these evils is beyond the control of State authorities I do not doubt; that the power of the Executive of the United States, acting within the limits of existing laws, is sufficient for present emergencies is not clear. Therefore, I urgently recommend such legislation as in the judgment of Congress shall effectually secure life, liberty, and property, and the enforcement of law in all parts of the United States.' [The legislation, which was enacted on April 20, 1871, had three main aims]. First, it might . . . override certain[] kinds of state laws. . . . Second, it provided a remedy where state law was inadequate. . . . The third aim was to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice. . . . The debates are replete with references to the lawless conditions existing in the South in 1871. . . . It was not the unavailability of state remedies but the failure of certain States to enforce the laws with an equal hand that furnished the powerful momentum behind this force bill.' . . . [T]he remedy created was . . . against those who representing a State in some capacity were unable or unwilling to enforce a state law" (*Monroe, 365 U.S. at 172-176* [footnotes omitted]).

> and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress"

(emphasis added). Thus, *section 1983* permits an individual deprived of his or her federal civil rights by person(s) acting under color of state law (i.e., government officials) to bring a civil suit against the state actor(s), in their *personal capacity*, for compensatory relief. Moreover, the Supreme Court stated that *section 1983* was meant to create

> "a species of liability in favor of persons deprived of their federal civil rights by those wielding state authority. . . . '[T]he central objective of the Reconstruction-Era civil rights statutes . . . is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief.' . . . Thus, *[section] 1983* provides 'a uniquely federal remedy against incursions . . . upon rights secured by the Constitution and laws of the Nation,' . . . and *is to be accorded 'a sweep as broad as its language.*
>
> *Any assessment of the applicability of a state law to federal civil rights litigation, therefore, must be made in light of the purpose and nature of the federal right.* This is so whether the question of state-law applicability arises in *[section] 1983* litigation brought in state courts, which

> possess concurrent jurisdiction over such actions, . . . or in federal-court litigation"

(*Felder v Casey, 487 U.S. 131, 139, 108 S. Ct. 2302, 101 L. Ed. 2d 123 [1988]* [emphasis added and citations omitted]).

Bottom line, Congress decided that the threat of abuse of citizens by those acting under color of state law was real enough to justify creating the *section 1983* cause of action -- even though many *section 1983* cases lack merit. Accordingly, the State of New York is not free to decide that DOCS employees must be immune from such suits. In any event, the issue here is not whether plaintiff has a right to bring these claims -- he clearly does -- but whether state courts, as well as federal courts, must bear the burden of adjudicating them. In my view, state courts cannot selectively escape this responsibility. However, over the years, New York State courts have (*see* Steven H. Steinglass, *Sword and Shield: A Practical Approach to Section 1983 Litigation*, at 153 [3d ed 2006] [ABA] [stating that "[t]he most flagrant example of a state court system selectively excluding *§ 1983* cases is the refusal of the New York courts to entertain *§ 1983* actions against state correctional officials."]).

Although the State of New York *generally* has the freedom to fix the rules of subject matter jurisdiction its courts must follow, it does not have the authority to enact a statute that violates or is inconsistent with federal law -- for example, a statute immunizing "an official from liability for injuries compensable under federal law" (*Howlett v Rose, 496 U.S. 356, 361, 110 S. Ct. 2430, 110 L. Ed. 2d 332 [1990]* [citing *Martinez v California, 444 U.S. 277, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980)*]) -- and simply refer to the statute as a neutral rule of subject matter jurisdiction that serves as a valid excuse for Supremacy Clause purposes. In enacting *Correction Law § 24*, however, the State Legislature has put forth a statute immunizing official conduct otherwise actionable under federal law. *Section 24* is, therefore, inconsistent with *section 1983* and violative of the *Supremacy Clause*.

II.

Under the Supremacy Clause (*Article VI, clause 2 of the Federal Constitution*), federal law is "the supreme Law of the Land." The Supreme Court explained:

> "[f]ederal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum-although both might well be true-but because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The *Supremacy Clause* makes those laws the supreme Law of the Land, and charges state courts with a

> coordinate responsibility to enforce that law according to their regular modes of procedure. The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. . . . The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent"

(*Howlett, 496 U.S. at 367* [citations and internal quotation marks omitted]). Federal and state courts, therefore, have concurrent jurisdiction over federal actions and state courts have a duty to enforce federal law to the same extent as federal courts *except* where a valid excuse to the exercise of such jurisdiction exists. Discussing this "valid excuse" exception, the Supreme Court articulated three corollaries:

> "1. A state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of valid excuse. . . . The existence of the jurisdiction creates an implication of duty to exercise it.
>
> . . .

> 2. An excuse that is inconsistent with or violates federal law is not a valid excuse.
>
> . . .
>
> 3. When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, we must act with utmost caution before deciding that it is obligated to entertain the claim. . . . The requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent to hear [a] case in which the federal claim is presented. The general rule . . . is that federal law takes the state courts as it finds them. . . . The States thus have great latitude to establish the structure and jurisdiction of their own courts. . . . In addition, States may apply their own neutral procedural rules to federal claims, unless those rules are [preempted] by federal law"

(*id. at 369-372* [citations omitted]).

Accordingly, a state may enact legislation limiting its subject matter jurisdiction over claims otherwise within its purview as long as the legislation is supported by a valid excuse. If a state applies a *neutral* rule of judicial administration, the state has a valid excuse for refusing to provide a court of competent jurisdiction to hear such claims. For the reasons set forth below, *Correction Law § 24* is not a valid excuse.

First, the Supreme Court has not deemed the type of "jurisdictional" rule at bar -- the effect of which is that *section 1983* damages claims against one group of state employee are barred while identical claims against other state employees are allowed -- to be a valid excuse. There have only been three cases in which the Supreme Court has held that a valid excuse exists for a state court's refusal to entertain a federal claim. These cases involved neutral rules of judicial administration -- all markedly different from *section 24* -- where the state court dismissed the federal claim: (1) on forum non conveniens grounds;[10] (2) because the parties were nonresidents of the forum state;[11] or (3) because the federal claim arose outside of the state's territorial jurisdiction[12] (*see Howlett, 496 U.S. at 374-375*). Moreover, in determining what would be an acceptable valid excuse, the Supreme Court cautioned that "[t]he fact that a rule is denominated jurisdictional does not provide a court an excuse to avoid the obligation to enforce federal law if the rule does not reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect" (*id. at 381*). As will be made clear below, *Correction Law § 24* does neither.

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[10] *See State of Missouri v Mayfield (340 U.S. 1, 4, 71 S. Ct. 1, 95 L. Ed. 3 [1950]* [holding that state court could apply the forum non conveniens doctrine to bar adjudication of action under Federal Employer's Liability Act (FELA) if the State "enforce(d) its policy impartially so as not to involve a discrimination against FELA"]).

[11] *See Douglas v New York, N.H. & H.R. Co. (279 U.S. 377, 49 S. Ct. 355, 73 L. Ed. 747 [1929]* [holding that state statute properly permitted discretionary dismissal of both federal and state claims where neither party was a resident of the forum State]).

Second, the majority's view that *section 24* does not discriminate against *section 1983* damages claims is based, in my view, on an unduly narrow reading of United States Supreme Court precedent. In *Martinez*, the Supreme Court held that a California statute immunizing government conduct was not controlling in *section 1983* litigation, even where such litigation took place in state court, because the application of the state's immunity law would thwart the remedial purpose of *section 1983* (*444 U.S. at 284*). In so holding, the Court observed that "where the same type of claim, if arising under state law would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim" (*id. at 283 n 7*).

At issue in *Felder* was a Wisconsin notice-of-claim statute, which effectively shortened the statute of limitations for those seeking to assert federal civil rights claims. The Supreme Court held that the Wisconsin statute was preempted to the extent that it applied to *section 1983* claims because the statute conflicted in both *purpose and effect* with the remedial objectives of *section 1983*, and its application to a *section 1983* claim brought in state court could yield a different outcome than if it were brought in federal court (*487 U.S. at 138, 152*). Although the statute in *Felder* did not purport to limit the jurisdiction of Wisconsin courts, if it had, the Court would have reached the same result (*see Howlett, 496 U.S. at 382-383* [stating that "[t]he force of the *Supremacy Clause* is not so weak that it can be evaded by mere mention of the word 'jurisdiction.' "]).

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[12] *See Herb v Pitcairn (324 U.S. 117, 123, 65 S. Ct. 459, 89 L. Ed. 789 [1945]* [stating that state courts "construed the state jurisdiction and venue laws in a discriminatory fashion"]).

Moreover, in *Howlett*, the Supreme Court considered whether a Florida statute in which the State waived sovereign immunity from state tort actions -- but not from *section 1983* claims -- against state defendants was a jurisdictional limitation on the power of the Florida state courts. The Court held that the statute violated the *Supremacy Clause* because the state courts entertained similar state claims not subject to the sovereign immunity defense; as such, *section 1983* claims could not be precluded (*see Howlett, 496 U.S. at 375*). Significantly, the court noted that once a state opens its courts to hear *section 1983* actions, it may not selectively exclude certain *section 1983* actions by denominating state policies as jurisdictional (*id. at 381*).

In light of the foregoing, the majority's nondiscrimination and "equality requirement" arguments are unavailing. I acknowledge that Congress cannot require New York State to *create* a court of competent jurisdiction to entertain *section 1983* claims. Here, however, one such court exists. New York State supreme courts are courts of general (i.e., "original, unlimited and unqualified") jurisdiction (*NY Const, Art. VI § 7*; *Kagen v Kagen, 21 NY2d 532, 537, 236 N.E.2d 475, 289 N.Y.S.2d 195 [1968]*) that already hear and adjudicate state law claims for damages *and* all *section 1983* claims -- including claims for declaratory and injunctive relief *and* claims where money damages are sought -- *against state employees (except those employed by DOCS)*. Since the same type of state law claim -- and federal law claim for that matter -- are enforceable in state supreme court, the State cannot selectively refuse to enforce the federal claim.

Further, as noted by the majority, the State Legislature determined that the State, and not DOCS employees, should be liable for the wrongful conduct committed within the scope of employment (*see Correction Law § 24[2]*). This policy judgment logically flows from the above-mentioned purpose of *section 24*. However, under the *Supremacy Clause*, "[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield" (*Felder, 487 U.S. at 138* [internal quotation marks omitted]). Thus, neither the state's policy judgment nor the purpose underlying such judgment qualifies as a neutral rule of judicial administration.

Third, in resolving the issue at bar, the *broad* goals and objectives of *section 1983*, and for that matter its progenitor (the Civil Rights Act of 1871), must be taken into account. Specifically, this Court should determine whether

> "the application of the [state statute] to *§ 1983* actions brought in state courts [is] consistent with the goals of the federal civil rights laws, or [whether] the enforcement of [the state statute] instead stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"

(*id.*).

Here, *Correction Law § 24*, which by its plain terms immunizes DOCS employees from liability for certain conduct actionable under *section 1983*, [13] is inconsistent with *section 1983*'s remedial purposes in several important respects. For those litigants who bring their *section 1983* claims in state court, *section 24*: (1) interferes with *section 1983* by barring litigants from receiving compensatory relief *directly* from the individual state actor(s) who committed the actionable conduct; and (2) places significant obstacles in front of litigants seeking to secure a full recovery. [14]

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[13] *See Baker v Coughlin, 77 F3d 12, 15 (2d Cir 1996)* (holding that "by its plain terms, *§ 24* governs the substantive rights of corrections officers by conferring upon them an immunity from liability for activities that fall within the scope of the statute").

Additionally, a state may not extend its sovereign immunity and pass legislation immunizing "an official from liability for injuries compensable under federal law" (*Howlett, 496 U.S. at 361* [citing *Martinez*]). Comparing the statutes in *Howlett* and the case at bar makes clear that both states sought to cloak its officials in their own sovereign immunity. Put simply, under the statute in *Howlett*, the school board was "the state" and therefore immune. Here, damages suits based on the employees' actions can only be brought "as a claim against the state" (*Correction Law § 24[2]*)[15] The result, in both cases, is that plaintiff's only state-court remedy is a suit against the state, which, pursuant to the *Eleventh Amendment of the Federal Constitution* and for

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[14] Under *section 24*, a litigant can bring *section 1983* actions for declaratory and injunctive relief in state court. However, if the litigant is to have a full recovery, as contemplated by *section 1983*, he or she must seek money damages in federal court. Thus, to obtain a full recovery, a litigant has to split claims and bring two separate actions in two separate jurisdictions. This places an onerous burden on litigants. *See also Woodward v State of New York (23 AD3d 852, 857, 805 N.Y.S.2d 670 [3d Dept 2005]* [Kane, J., dissenting]).

[15] By this requirement, *section 24* has redefined and limited the *section 1983* cause of action, i.e., it eliminates a plaintiff's federal right to sue a DOCS employee, in his or her personal capacity, for damages in state court.

section 1983 purposes, is not a "person" that can be held liable under *section 1983*[16] Therefore, plaintiffs are left with no remedy in state court against those individuals who would be liable under *section 1983*. Given the goals and objectives of *section 1983*, Congress could not have envisioned such a result.

III.

In conclusion, I stress two points which make clear why the Appellate Division order should be reversed. First, if you strip away the veneer of the majority's arguments, *section 24* -- a statute which, on its face, precludes anyone, including other DOCS employees and prisoners, from bringing damages claims against DOCS personnel -- is not a *neutral* jurisdictional barrier to a particular type of claim. In reality, *section 24* functions as an immunity statute that allows state courts to selectively exclude prisoner suits for damages against DOCS personnel. Second, contrary to the majority's view, *section 24* simply does not fall under the category of what could be a "valid excuse" (i.e., *section 24* does not reflect the concerns of power over the litigants and competence over subject matter). Here, the State supreme court has jurisdiction over the parties and, based on the State's willingness to allow the adjudication of *all section 1983* claims against *other* state employees, competence over the type of claim at bar. Further, plaintiff's claims arose *within* the State's territorial jurisdiction. Based on the foregoing, *Correction Law § 24* does not afford a valid excuse to selectively exclude *section 1983* damages suits against DOCS personnel and is, therefore, constitutionally infirm under the *Supremacy Clause*.

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[16] *See Howlett, 496 U.S. at 365* (stating "[a]s we held last Term in *Will v Michigan Dept. of State Police, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 [1989]*, an entity with Eleventh Amendment immunity is not a 'person' within the meaning of *§ 1983*.").

* * * *

Orders affirmed, without costs. Opinion by Judge Graffeo. Chief Judge Kaye and Judges Ciparick and Read concur. Judge Jones dissents and votes to reverse in an opinion in which Judges Smith and Pigott concur.

Decided November 27, 2007

A04208 Summary:
BILL NO A04208

SAME AS Same as S 332

SPONSOR Aubry

COSPNSR

MLTSPNSR Cook, Greene, Magee

Amd S24, Cor L

Ensures that employees of the OMH who work in prison mental health units receive the same immunity from civil damages as other state employees who work in prisons; civil actions cannot be brought in state court against any office of mental health officer or employee providing mental health services in a department of correctional services facility in his or her personal capacity for acts or omissions within the scope of employment.

A04208 Actions:
BILL NO A04208

01/31/2007 referred to correction
01/09/2008 referred to correction

A04208 Votes:

A04208 Memo:
BILL NUMBER: A4208

TITLE OF BILL : An act to amend the correction law, in relation to conforming civil immunity protection for officers or employees of the office of mental health, with the protections afforded to others who serve in correctional facilities operated by the department of correctional services

PURPOSE OF BILL :

To ensure that employees of the Office of Mental Health (OMH) who work in prison mental health units, receive the same immunity from civil damage actions as all other State employees who work in the prisons.

SUMMARY OF PROVISIONS :

Section 1 of this bill would amend Correction Law S 24 to provide that civil actions for damages cannot be brought in any State court against any OMH officer or employee providing mental health services in a Department of Correctional Services (DOCS) facility in his or her personal capacity for acts or omissions within the scope of employment. This section would also provide that claims for damages arising out of the acts of such OMH employees shall be brought in the Court of Claims as a claim against the State.

Section 2 would make this bill effective immediately and make it applicable only to claims arising on or after the effective date of the bill.

EXISTING LAW :

Correction Law S 24(1) provides that DOCS officers and employees cannot be sued civilly in their personal capacities for damages arising out of any act or omission within the scope of employment, except by the Attorney General on behalf of the State. Subdivision 2 of section 24 requires that claims for damages arising out of acts or omissions of DOCS employees shall be brought in the Court of Claims as a claim against the State of New York.

Correction Law S401 authorizes the Commissioner of Correctional Services, in cooperation with the Commissioner of Mental Health, to establish programs in correctional facilities to serve mentally ill inmates which are administered and staffed by OMH (known as "satellite units").

Executive Law S259-q affords employees of the Division of Parole the same protection as Correction Law S24 affords DOCS employees.

STATEMENT IN SUPPORT :

OMH employees who work in satellite units located within DOCS facilities are no less susceptible to civil actions brought by inmates that are DOCS employees. OMH employees have close daily contact with the inmates they treat and are as likely to be sued as DOCS employees, however, they do not have the same protection against personal liability under State law as do DOCS employees.

One effect of this disparate treatment is exemplified by a recent federal court decision, BROWN V. SHERIDAN , 150 F.R.D. 462 (N.D.N.Y 1993). In this case, plaintiffs brought federal claims against DOCS and OMH employees working in the same correctional facility as well as State claims in federal court (based on supplemental jurisdiction). The court dismissed the State claims against DOCS employees based on immunity pursuant to Correction Law S 24, but did not dismiss the State claims against OMH employees.

It is significant that when DOCS employees were providing mental health services in the prisons, prior to the shift of responsibility for such services to OMH, they were protected in their personal capacities by Correction Law S 24. Moreover, Institutional Parole Officers, who are also stationed in DOCS facilities, have the same protection from personal liability as do DOCS employees.

Importantly, this bill's extension of civil liability limitations to OMH employees working in the prisons will not prevent inmates from pursuing legitimate claims. As is currently the case for actions involving DOCS employees, damage claims can still be pursued in the Court of Claims as actions against the State. In addition, any acts or omissions of employees which are outside the scope of their employment can also be pursued against them in

State court. Furthermore, this bill would apply only to State claims and would not affect an inmate`s ability to sue OMH employees in their personal capacities in federal court on federal causes of action which provide for personal liability (e.g., actions under 42 U.S.C. S 1983). Currently, inmates can and do sue DOCS employees in their personal capacities in federal court.

This bill seeks to end the disparate treatment of OMH employees working in prisons and ensures that inmates can still pursue their State claims against OMH as they do currently against DOCS.

PRIOR LEGISLATIVE HISTORY : A8440 (2000); A5467 (2002); A875 referred to corrections in 2003 and 2004. A4989 of 2006 referred to correction on 01/04/06.

BUDGET IMPLICATIONS :

None.

EFFECTIVE DATE : This act shall take effect immediately, and the provisions of this act shall apply with respect to claims arising on or after such date.

STATE OF NEW YORK

4208

2007-2008 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 31, 2007

Introduced by M. of A. AUBRY -- Multi-Sponsored by -- M. of A. COOK, GREENE, MAGEE -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to conforming civil immunity protection for officers or employees of the office of mental health, with the protections afforded to others who serve in correctional facilities operated by the department of correctional services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 24 of the correction law, as added by chapter 283 of the laws of 1972 and subdivision 3 as amended by chapter 466 of the laws of 1978, is amended to read as follows:

S 24. Civil actions against department personnel AND PERSONNEL OF THE OFFICE OF MENTAL HEALTH IN DEPARTMENT FACILITIES. 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, OR ANY OFFICER OR EMPLOYEE OF THE OFFICE OF MENTAL HEALTH WHO PROVIDES SERVICES IN A PROGRAM FOR THE TREATMENT OF MENTALLY ILL INMATES ESTABLISHED PURSUANT TO SECTION FOUR HUNDRED ONE OF THIS CHAPTER, in his OR HER personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.

Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department, OR ANY OFFICER OR EMPLOYEE OF THE OFFICE OF MENTAL HEALTH WHO PROVIDES SERVICES IN A PROGRAM FOR THE TREATMENT OF MENTALLY ILL INMATES ESTABLISHED PURSUANT TO SECTION FOUR HUNDRED ONE OF THIS CHAPTER, shall be brought and maintained in the court of claims as a claim against the state.

STATE OF NEW YORK

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2007-2008 Regular Sessions

IN SENATE

(Prefiled)

January 3, 2007

Introduced by Sens. NOZZOLIO, ALESI, FLANAGAN, LARKIN, MALTESE, MAZIARZ, MORAHAN, RATH, TRUNZO, WRIGHT, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to conforming civil immunity protection for officers or employees of the office of mental health, with the protections afforded to others who serve in correctional facilities operated by the department of correctional services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 24 of the correction law, as added by chapter 283 of the laws of 1972 and subdivision 3 as amended by chapter 466 of the laws of 1978, is amended to read as follows:

§ 24. Civil actions against department personnel and personnel of the office of mental health in department facilities. 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, or any officer or employee of the office of mental health who provides services in a program for the treatment of mentally ill inmates established pursuant to section four hundred one of this chapter, in his or her personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.

2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department, or any officer or employee of the office of mental health who provides services in a program for the treatment of mentally ill inmates established pursuant to section four hundred one of this chapter, shall be brought and maintained in the court of claims as a claim against the state.

PETITIONER'S BRIEF

Supreme Court, U.S.
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③

No. 07-10374

In the Supreme Court of the United States

KEITH HAYWOOD,
Petitioner,
v.
CURTIS DROWN, *ET AL.*
Respondents.

On Writ of *Certiorari* to the New York Court of Appeals

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether a state's withdrawal of jurisdiction over certain damages claims against state corrections employees – from state courts of general jurisdiction – may be constitutionally applied to exclude federal claims under Section 1983, especially when, as here, the state legislature withdrew jurisdiction because it concluded that permitting such lawsuits is bad policy?

PARTIES

Petitioner Keith Haywood is an individual incarcerated in a state prison in New York. Respondents Curtis Drown, Pat Smith, Steve Jennett, M. Coryer, P. Devlin, and D. Bouvier are New York State Department of Corrections employees.

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BRIEF FOR PETITIONER

OPINIONS BELOW

The litigation below involves two separate actions, which were consolidated for briefing and argument by New York's Appellate Division, and decided together by New York's Court of Appeals. The majority and dissenting opinions of the New York Court of Appeals, JA 55,[1] are reported at 9 N.Y.3d 481 (N.Y. 2007). The judgments of the New York Supreme Court, Appellate Division, 4th Department, JA 42 & JA 44, are reported at 826 N.Y.S.2d 542 (N.Y. App. Div. 2006) and 825 N.Y.S.2d 417 (N.Y. App. Div. 2006). The judgments of the New York Supreme Court, County of Wyoming, JA 34 & JA 36, are unreported.

JURISDICTION

The New York Court of Appeals issued its decision on November 27, 2007. On January 30, 2008, Justice Ginsburg extended the time within which to file a petition for a writ of *certiorari* to and including April 25, 2008. The petition was filed within that time, on April 9, 2008, along with a motion to proceed *in forma pauperis*. The petition for a writ of *certiorari* and the motion to proceed *in forma pauperis* were granted on June 16, 2008. This Court has jurisdiction under 28 U.S.C. §1257.

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[1] References to the Joint Appendix are indicated by "JA _."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Supremacy Clause of the United States Constitution, art. VI, cl. 2; Section 1 of the Civil Rights Act of 1871, *codified at* 42 U.S.C. §1983; and Article 2, Section 24, of Chapter 43 of Consolidated Laws of New York.

The Supremacy Clause provides, in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. U.S. Const. art. VI, cl. 2.
>
> 42 U.S.C. §1983 provides:
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party

> injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

New York Corrections Law §24 provides:

> 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department [of corrections], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

STATEMENT OF THE CASE

New York has closed its courts, including its courts of general jurisdiction, to many damages actions against state prison employees because the state legislature views them as bad policy. The decision below settled, for the first time, that the state statute that closes the state's courts also applies to federal claims within its purview – *i.e.*, if the defendants are state prison employees, the suits request damages, and certain misconduct is alleged. The decision below further ruled that applying the state statute to federal claims is fully consistent with the Supremacy Clause.

Thus, the question is whether states may constitutionally cherry-pick which specific federal actions to permit in their courts, so long as they impose the same filter on precisely identical state law actions – and whether states may do so because they disagree with Congress about the value of permitting such actions against state employees.

New York's withdrawal of jurisdiction. The challenged statute crafts a narrow exception to the jurisdiction of every state court, including those with general jurisdiction. It is codified as part of the state's substantive corrections laws and is intended to protect state prison employees and state prison operations.

The statute removes jurisdiction from all state courts over any private civil action against New York Department of Corrections (DOCs) employees in their personal capacities, if the action seeks damages and alleges conduct adjudged, under New York law, to be within their scope of employment and undertaken or omitted in the discharge of their duties. *See* N.Y. Correct. Law §24(1).

New York law does not, however, incorporate federal standards for determining which conduct is outside the scope of employment and which is not. Thus, allegedly unlawful conduct undertaken under color of state law is regularly treated as within the scope of employment and undertaken in the discharge of official state duties, as a matter of state law. As a result, lawsuits that would be actionable under federal law are often denied access to New York's courts. *See, e.g., Woodward v. New York*, 805 N.Y.S.2d 670 (N.Y. App. Div. 2005) (barring DOCs employee's Section 1983 claims against his supervisors for employment decisions in violation of his First, Fifth and Fourteenth Amendment rights because the conduct arose out of the discharge of the supervisors' duties and was within the scope of their employment); *Cedepa v. Coughlin*, 513 N.Y.S.2d 528 (N.Y. App. Div. 1987) (barring prisoner's Section 1983 suit alleging excessive force in violation of his due process and Eighth Amendment rights on the ground that the use of force *may be* within the scope of employment – without reaching whether the specific conduct at issue was within the scope of employment or even lawful).

The legislative purpose is to provide state prison employees with immunity from damages suits because the state views such suits as bad policy. The original statute expressly granted these employees qualified immunity. *See* N.Y. Correct. Law §6-b (McKinney 1946). The statute was amended several times, at one point expressly providing for holding state prison employees harmless and indemnifying them. *See* N.Y. Correct. Law §24 (McKinney 1972). The current version was enacted in 1978, and precludes state court jurisdiction over most damages suits against state prison employees altogether.

New York's legislature still refers to the statute as providing state prison employees with "immunity from civil damages." J.A. 84; *see also* J.A. 89, 91.

Judge Jones below noted that the state's highest court had recognized "that the purpose of *section 24* is to ensure that DOCs employees . . . freely perform their dangerous duties of maintaining safety and security within correctional facilities without fear of being subjected to voluminous, vexatious and, in many cases, meritless suits brought by prisoners and being held personally liable should a prisoner prevail." JA 69. (Jones, J., dissenting) (referencing *Arteaga v. New York*, 527 N.E.2d 1194 (N.Y. 1988)) (internal citation omitted). The majority recognized that the statute effected "an absence of jurisdiction in state courts to entertain claims of civil rights violations against those employees directly." J.A. 65.

New York's Attorney General described the state statute to this Court as "further[ing] New York's legitimate interest in minimizing the disruptive effect of prisoner damages claims against correction employees, many of which are frivolous and vexatious." NYAG Cert. Opp'n 10. He explained in detail below how the statute furthers the state's legislative goal: the person who allegedly violated federal law "is not named as a defendant . . . is not served with process . . . does not need to retain counsel or seek representation by the Attorney General [and] does not have to answer the complaint." If damages are awarded, the person who violated federal law also does not face "threat of attachments or liens on [his] personal assets" or "have to seek indemnification by the State." NYAG Court of Appeals Br. 12.

Although this case arises in the context of a Section 1983 suit brought by a prisoner, the state statutory exclusion applies equally to suits brought by state prison employees against their supervisors under Section 1983. *See, e.g., Woodward*, 805 N.Y.S.2d at 673; J.A. 64 & n.6. By its terms, the exclusion would also apply to suits brought by visitors to the prison who were subjected to unlawful conduct by prison employee. As the court below confirmed, "*Section 24* operates without regard to the identity of the plaintiff," J.A. 64 n.6, so long as the plaintiff has brought a private damages action.

New York courts' jurisdiction over similar disputes. New York's courts of general jurisdiction, its supreme courts, *do* have jurisdiction to hear actions for damages against state prison employees – including the very claims Haywood asserted – *if* the action is brought by the state's attorney general on behalf of the state. N.Y. Correct. Law §24(1). These courts also have jurisdiction to hear private civil actions against state prison employees, including Section 1983 claims, *if* the plaintiff seeks *only* declaratory or injunctive relief. *Id.* Likewise, these courts may hear even private *damages* actions against a state corrections employee if the conduct alleged is outside the scope of the defendant's employment or the discharge of his duties – as determined under state law. *Id.*

New York's courts of general jurisdiction also may hear private civil actions for damages, including Section 1983 claims, against any state employee who does *not* work for the state's Department of Corrections. *See, e.g., Farley v. Town of Hamburg,* 824 N.Y.S.2d 549 (N.Y. App. Div. 2006) (permitting §1983 action against a police officer for damages); *McCummings v. New York City Transit Auth.*, 580 N.Y.S.2d 931 (N.Y. App. Div. 1992) (permitting §1983 action against transit authority employee for damages).

In addition, these courts have jurisdiction over tort claims. *See* N.Y. Const., art. VI, §7(a) (conferring jurisdiction to the state's supreme courts over cases in law and equity); *Pollicina v. Misericordia Hosp. Medical Ctr.*, 624 N.E.2d 974, 977 (N.Y. 1993) (noting the supreme courts' "inviolate authority to hear and resolve all causes in law and equity"); *Kagen v. Kagen*, 236 N.E.2d 475, 478 (N.Y. 1968) ("the Supreme Court is a court of original, unlimited and unqualified jurisdiction").

New York's substitute claim. The statute does permit compensation claims for unlawful conduct by state prison employees that may not be brought against the employees themselves. But such claims may only be brought against the State of New York, not against those who violated the law and caused the harm. Like all claims the State has permitted to be brought against it, such claims are subject to special rules and must be brought in its specialized Court of Claims. *See* N.Y. Correct. Law §24(2).

Together, the provisions of New York's Correction Law §24 furthers the *state's* policy choices in favor of some limited compensation to victims but against imposing any reputational, emotional and/or financial toll on state prison employees – regardless of their conduct. As a result, *no* New York state court – including New York's Court of Claims – has jurisdiction to hear Section 1983 claims complaining of unlawful conduct by state prison employees, because the right of action Congress provided in Section 1983 is a right to sue state *employees*.[2]

Thus, New York has not determined *which* of its courts will hear these federal claims. New York has excluded *all* such federal claims from its courts. At the same time, it has provided a court to hear a different *state law* claim that better suits its policies.

This state law alternative is significantly different from the federal right Congress provided in Section 1983. In addition to precluding damages suits against those who allegedly committed the violations, it imposes a very short notice of intent prerequisite that effectively shortens the limitations period to 90 days. *See* N.Y. Ct. Cl. Act §10(3). In contrast, the statute of limitations for a Section 1983 claim in New York is three years. *See Wallace v. Kato*, 127 S. Ct. 1091, 1094 (2007) (statute of limitations supplied by state statute of limitations for personal injury); N.Y. C.P.L.R. §214(5) (providing three-year limitations period for personal injury suits); *Jaghory v. N.Y. Dep't of Ed.*, 131 F.3d 326, 331-32 (2d Cir. 1997) (recognizing three-year statute of limitations for Section 1983 suits in New York).

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[2] *See, e.g., Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989) (Section 1983 suits may not be brought against a state).

The state law alternative also does not include any opportunity to seek an award of attorney fees, in contrast to federal law governing Section 1983 claims, which expressly provides for fee awards in order to facilitate broad access to justice. *Compare* 42 U.S.C. §1988 (in a §1983 action, "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs") *with* N.Y. Ct. Cl. Act §27 ("nor shall counsel or attorney's fees be allowed by the court to any party"). Thus, the state law alternative does not provide attorney fees, regardless of a claim's merit.

In addition, the state law alternative precludes any award of punitive damages, in contrast to Section 1983 which permits all forms of redress available at law or equity. *Compare Sharapata v. Islip*, 437 N.E.2d 1104, 1105 (N.Y. 1982) ("the waiver of sovereign immunity effected by section 8 of the Court of Claims Act does not permit punitive damages to be assessed against the State or its political subdivisions") and *Wheeler v. State*, 479 N.Y.S.2d 244, 247 (N.Y. App. Div. 1984) (punitive damages may not be assessed against the State) *with Smith v. Wade*, 461 U.S. 30, 56 (1983) ("We hold that a jury may be permitted to assess punitive damages in an action under §1983 when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.").

The state law alternative does not permit jury trial, N.Y. Ct. Cl. Act §12(3), which is otherwise available in the state's courts that hear tort claims and Section 1983 claims against other defendants. Finally, the state law alternative imposes the burden of bringing separate actions in different courts if the claimant seeks both compensation and declaratory or injunctive relief. *Compare* N.Y. Ct. Cl. Act §9; *Silverman v. Comptroller,* 339 N.Y.S.2d 149, 150 (N.Y. App. Div. 1972) (the Court of Claims' jurisdiction is "limited to awarding money damages against the State and is without power to grant strictly equitable relief"); *Wikarski v. New York,* 459 N.Y.S.2d 143 (N.Y. App. Div. 1983) (the Court of Claims does not have authority to render a declaratory judgment) *with* 42 U.S.C. §1983 (permitting actions at law, suits in equity and any other proceeding for redress).

The course of proceedings below. Keith Haywood, a prisoner in New York's Attica Correctional Facility, initiated this suit by filing two actions *pro se* in New York's Wyoming County Supreme Court in 2005 seeking damages under Section 1983 and state law against different Department of Corrections' employees for separate violations of his civil rights. J.A. 5-15, 16-22.

Both his initial and amended complaints alleged that the court had jurisdiction under Section 1983 and the Supremacy Clause; that states do not have the power to confer immunity from federal claims; and that New York's supreme courts are fully competent to provide the remedies permitted under Section 1983. J.A. 5-6, 16, 30-33. They directed the trial court's attention to this Court's decisions in *Felder v. Casey*, 487 U.S. 131 (1988) and *Howlett v. Rose*, 496 U.S. 356 (1990). *Id.*

New York's Attorney General, representing the state prison employees, moved to dismiss each case on the ground that New York Correction Law §24 deprived the court of jurisdiction. Haywood submitted a sworn affidavit on December 19, 2005, arguing that New York Correction Law §24's jurisdictional bar conflicted and interfered with Section 1983, and therefore could not apply under the Supremacy Clause. J.A. 23-29.

The trial court dismissed both actions for lack of jurisdiction under New York Correction Law §24. J.A. 34-35, 36-37. Haywood, again *pro se*, timely appealed the orders to the Appellate Division, asserting that the Supremacy Clause permitted his federal claims to proceed notwithstanding the state statute. J.A. 38, 39. He also moved to consolidate the appeals for briefing and argument, which was granted. J.A. 40-41. The Appellate Division affirmed both orders of dismissal and expressly rejected Haywood's Supremacy Clause argument, without further explanation. J.A. 42-43, 44.

Haywood timely appealed to the Court of Appeals, citing New York C.P.L.R. §5601, a rule that permits such appeals as of right when the appellate division's final judgment involves interpreting the state or federal constitution, or the constitutionality of a statute is the only issue. J.A. 45-46. Haywood's notice of appeal challenged N.Y. Correction Law §24 on the ground that it conflicted with 42 U.S.C. §1983. At the request of the Court, the undersigned counsel undertook Haywood's representation.

The New York Court of Appeals affirmed in a closely split decision, four to three. J.A. 55-83. The majority ruled that New York's statute could withdraw jurisdiction over this subcategory of federal claims from all the state's courts without violating the Supremacy Clause. J.A. 61-64. It reasoned that the jurisdictional bar does not discriminate against federal rights because it also applies to state law private damage claims against state prison employees for conduct within their scope of employment and in the discharge of their duties. J.A. 62-63. *That*, the majority held, meant the state statute is a neutral jurisdictional barrier. J.A. 63-64.

The majority further noted that the statute reflected the state legislature's recognition that the State of New York "is, in effect, the real party in interest when there is a challenge to a correction officer's alleged conduct arising from the discharge of official duties," and it ruled that the legislature is entitled to "exercise its prerogative to establish the subject matter jurisdiction of state courts in a manner consistent with New York's conditional waiver of sovereign immunity" and to require damages claims for such officers' misconduct to be brought against the state in New York's Court of Claims. J.A. 65, 66.

The majority recognized that Section 1983 provided a right to sue state employees, but not the State, and therefore no New York court would have jurisdiction over Section 1983 damages claims arising from the conduct of state prison employees within their scope of employment and in the discharge of their duties. J.A. 65 ("states are excluded from *section 1983* liability"). But it found that "New York does not discriminate against *section 1983* claims by allowing state, but not federal, actions involving DOCS employees to be adjudicated in the Court of Claims," because "it was Congress that decided to exempt the states as responsible parties from the purview of the federal statute." J.A. 66.

The majority concluded that the state legislature had the power to require New York's courts to adjudicate only state claims brought against the state and to relegate federal claims brought against individuals to federal court. J.A. 66-67.

The dissent – representing the views of three of the Court of Appeals' seven judges – argued that applying the state statute to a Section 1983 action is preempted because the state's interest in its own law and policy does not permit it to override federal law with which it is in conflict. J.A. 72-73. It viewed the state statute as conflicting here because it "functions as an immunity statute" that "frustrates the purpose of, and is inconsistent with, *section 1983*." J.A. 82, 67.

The dissent argued that the New York statute is not a neutral jurisdictional bar because the statute does not reflect concerns of power over the litigants and competence over subject matter. J.A. 76-77. The dissent explained that New York's supreme courts "have jurisdiction over the parties and the type of claim brought" because the "claims arose *within* the State's territorial jurisdiction" and these state courts "are courts of general (i.e., original, unlimited and unqualified) jurisdiction that already hear and adjudicate state law claims for damages and *all section 1983* claims against *other* state employees." J.A. 83, 79 (emphasis original). Therefore, they have "competence over the type of claim at bar." J.A. 83.

The dissent emphasized that, because "Congress decided that the threat of abuse of citizens by those acting under color of state law was real enough to justify creating the *section 1983* cause of action – even though many *section 1983* cases lack merit," the "State of New York is not free to decide that DOCS employees must be immune from such suits." J.A. 72.

The dissent concluded that the state statute "does not afford a valid excuse to selectively exclude *section 1983* damages suits against DOCs personnel and is, therefore, constitutionally infirm under the Supremacy Clause." J.A. 83.

SUMMARY OF THE ARGUMENT

New York's statute denies access to any of the state's courts for most private damages claims against state prison employees in order to protect them and state penal operations from such litigation. This statute cannot constitutionally be applied to federal claims, such as the Section 1983 claims at issue here, because it is directly contrary to Congress' policies and the express text of federal statutory provisions. The statute's creation of an alternative – and very different – right of action under state law is beside the point. The Supremacy Clause does not afford states the power to choose to disregard federal law when it is inconsistent with their own policies. Pt. I.

The neutral rule doctrine does not help New York's statute, because the statute is not a neutral rule in form, purpose, or function. New York's general power to determine the jurisdiction of its court system is not at issue here. New York has already made the choice to create courts with broad jurisdiction over similar and nearly identical actions. Having done so, New York may not now pick and choose among those actions Congress expressly provided and selectively close its courts to some of them. New York's determination to preclude state law actions requesting one type of relief against a particular group of state employees because it views such actions as harmful or frivolous does not shelter a parallel attack on federal claims. Pt. II.

ARGUMENT

I. THE PURPOSE AND EFFECT OF NEW YORK'S CORRECTION LAW §24 ARE CONTRARY TO CONGRESS' GOALS.

New York's corrections statute is precisely what the Supremacy Clause does not permit. It is undisputed that the State's policy is to immunize its prison employees from damages suits, and to protect itself from certain remedies – even though Congress found it vital to affirmatively permit these. It is also undisputed that the statute has the effect of placing insuperable obstacles to vindication of these federal rights in the state's courts.

New York's general power to regulate its courts does not permit it to use that power to countermand Congress' judgment. As this Court confirmed only last Term, a state's differing policy judgment does not permit it to use its funds – or its courts – to indirectly further policies contrary to Congress'. *Chamber of Commerce v. Brown*, 128 S. Ct. 2408, 2414-15 (2008) (ruling that California may not regulate noncoercive employer speech about unionization by restricting the use of state grants to further its view – contrary to Congress' that such speech necessarily interferes with employee choice).

It is unavailing how strong the state's interest is or how reasonable its policies. Even if the state policy is "understandable or laudable," it cannot displace the "goals of the federal legislation." *Felder v. Casey*, 487 U.S. 131, 143 (1988). "[T]he Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content." *Howlett v. Rose*, 496 U.S. 356, 371 (1990).

Thus, the Court of Appeals erred in accepting New York's policy choices because it found them reasonable – *e.g.*, "the New York Legislature has recognized that the State of New York is, in effect, the real party in interest when there is a challenge to a correction officer's alleged conduct." J.A. 65. "The decision to subject certain state [defendants] to liability for violations of federal rights . . . was a choice that Congress, not the [state] Legislature, made, and it is a decision that the State has no authority to override." *Felder*, 487 U.S. at 143, *accord Howlett*, 496 U.S. at 377.

A. New York's Purpose Is to Prevent Suits and Remedies With Which It Disagrees.

New York has long viewed most damages suits against prison employees as bad policy. The statute at issue, and its predecessors, were aimed at limiting or precluding such suits. The original provision conferred qualified immunity on state prison employees. *See* N.Y. Correct. Law §6-b (McKinney 1946). It was replaced in the 1970s with a provision holding these employees harmless and indemnifying them. *See* N.Y. Correct. Law §24 (McKinney 1972). The current provision precludes any state court from entertaining most damages suits against them.

The state legislature still describes the law as providing state prison employees with "immunity from civil damages," and is considering a bill to provide the same immunity to Office of Mental Health employees working in New York's prisons. *See, e.g.*, http://public.leginfo.state.ny.us/menuf.cgi; J.A. 84, 89, 91.

New York's highest court has recognized that the underlying state policy is to protect these employees in order to ensure that the state's prisons operate smoothly. *See, supra*, at 6. New York's Attorney General attributes the same legislative purpose, defending the State's policy and statute as a means of "minimizing the disruptive effect of prisoner damages claims against corrections employees" by protecting them from being named as defendants, having to seek counsel, being required to answer the complaint, risking personal assets, or undertaking the effort of seeking representation and/or indemnification from the State. NYAG Cert. Opp'n 10; NYAG Court of Appeals Br. 12 (relying on the view of New York's Court of Appeals in *Arteaga v. New York*, 527 N.E.2d 1194 (N.Y. 1988)).

Congress, however, determined – more than a century ago – that providing a right to private parties, including prisoners, to sue individuals who – under color of state law – deprived them of their federal constitutional or statutory rights is necessary to protect people from unlawful, harmful conduct by those wielding state power. *See* 42 U.S.C. §1983; *Felder*, 487 U.S. at 153 ("In enacting §1983, Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations.").

Indeed, Congress considered the risk of being sued an important deterrent for *preventing* such misconduct. *See, e.g., Owen v. City of Independence*, 445 U.S. 622, 651 (1980) ("§1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well"). *Accord Richardson v. McKnight*, 521 U.S. 399, 403 (1997) ("§1983 basically seeks to deter *state* actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide related relief") (quotation marks omitted, emphasis original); *Wyatt v. Cole*, 504 U.S. 158, 161 (1992) (same).

New York's policy judgment, therefore, "is the same policy judgment that . . . Congress renounced" in Section 1983. *Chamber of Commerce*, 128 S. Ct. at 2414 (finding a California statute preempted because it was founded in, and furthered, state policy at odds with federal labor policy).

New York's statutes also include provisions grounded in the view that the relief available to victims should be highly circumscribed, a policy also contrary to Congress'. New York's corrections law requires victims to resort to state-law claims against the State in New York's Court of Claims. The New York Court of Claims Act precludes the State from being held liable for attorney fees, even if the plaintiff prevails, or for punitive damages, regardless of how wanton the misconduct. It also precludes the State from being subject to injunctive relief or any other equitable remedy. *See, e.g.*, N.Y. Ct. Cl. Act §§9, 27; *Sharapata*, 437 N.E.2d at 1105. In addition, the Act deters and precludes many suits by imposing a 90-day notice requirement. *See* N.Y. Ct. Cl. Act §10(3). These rules purport to apply to all suits against the state, even those under federal law.[3]

B. New York's Statute Furthers the State's Immunity Policy.

It is undisputed that New York's Correction Law §24 effectively furthers the State's policy to cloak its prison employees with absolute immunity from private damages suits for their official conduct, regardless of whether their conduct violates the law. Under the statute, no such suits may proceed. Every New York court must immediately dismiss such suits for lack of jurisdiction, regardless of merit. Under the ruling below, every New York court must immediately dismiss such suits even if they are brought under federal law.

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[3] Although the Court of Appeals did not have the opportunity below to rule on the constitutionality of applying New York's statutes to federal claims against the State itself, the majority's reasoning dictates that New York's correction law and Court of Claims Act would be applied to suits brought, for example, by a state prison employee against the State under Title VII or the Family and Medical Leave Act. *See* J.A. 65 & n.8

Thus, the "real effect on federal rights" of New York's policy is to entirely preclude consideration in state courts of the Section 1983 suits brought by prisoners, prison employees and others against state prison employees, that Congress expressly provided. *Chamber of Commerce*, 128 S. Ct. at 2414 (quotation marks omitted).[4]

The Court of Appeals erred in concluding that, because "litigants like plaintiff can use the federal courts to pursue *section 1983* claims against individual defendants and seek all of the rights and remedies available under the federal act," the state could constitutionally bar such federal suits from its own courts based on the state's contrary policies. J.A. 66. That federal courts remain available for vindication of federal rights has never been found to justify a state's discrimination against them. This

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[4] The reasoning of the decision below would also truncate or deny state court consideration of federal claims against the State. For example, a prison employee who was discriminated against because of his race, could not obtain the attorney fees Congress expressly made available, and could not obtain any relief if he failed to provide the requisite 90-day notice to the State. *Compare* N.Y. Ct. Cl. Act §§10(3) & 27 *with* Title VII, 42 U.S.C. §2000e *et seq.*, 42 U.S.C. §1988(b) (expressly permitting attorney fee awards to prevailing party) and 42 U.S.C. §2000e-5(e)(1) (imposing different, and longer, notice requirement). Likewise, a prison employee who was denied rights under the Family and Medical Leave Act, would be denied some or all of its remedies. *Compare* N.Y. Ct. Cl. Act §§10(3) & 27 *with* FMLA, 29 U.S.C. §2601 *et seq.*, 29 U.S.C. §2607(a)(3) (permitting attorney fees); 29 U.S.C. §2617(c)(1) (providing employees with three years to file suit for willful misconduct and two years for negligent violations).

Court has repeatedly considered, and often invalidated, the application of state restrictions to federal claims, even though – in every case – federal courts remained an available alternative forum. *See, e.g.*, *Howlett*, 496 U.S. 356; *Felder*, 487 U.S. 131; *Monessen Southwestern Ry. Co. v. Morgan*, 486 U.S. 330 (1988); *Martinez v. California*, 444 U.S. 277 (1980); *Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1 (1950); *Testa v. Katt*, 330 U.S. 386 (1947); *Herb v. Pitcairn*, 324 U.S. 117 (1945); *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 234 (1934).

Indeed, *Martinez* rejected the applicability of a state immunity statute to federal claims brought in state court, emphasizing: "It is clear that the California immunity statute does not control this claim even though the federal cause of action is being asserted in the state courts." 444 U.S. at 284. *Felder* confirmed this fundamental principle, noting "we have held that a state law that immunizes government conduct otherwise subject to suit under §1983 is preempted" because "application of the state immunity law would thwart the congressional remedy," which itself establishes which immunities for state employees are consistent with Section 1983's purpose. 487 U.S. at 139. Two years later, *Howlett* unanimously re-confirmed that "a State cannot immunize an official from liability for injuries compensable under federal law." 496 U.S. at 360.

It is also unavailing that New York's current approach to providing immunity is by jiggering the jurisdiction of its courts rather than by means of a substantive immunity statute. This Court recently reconfirmed that there is no constitutionally cognizable distinction between direct and indirect regulation to achieve a policy inconsistent with Congress'. *See Chamber of Commerce v. Brown*, 128 S. Ct. at 2415. Just as California could no more "indirectly regulate [noncoercive employer speech about unionization] by imposing spending restrictions on the use of state funds" than it could "directly regulate" such conduct "by means of an express prohibition," *id.*, New York cannot indirectly regulate its employees' liability under federal law by imposing tailored restrictions on the use of its courts than it could directly regulate such liability by enacting an express immunity law.

C. New York's Substitution of a State Law Alternative Cannot Save Its Exclusion of Rights and Remedies Congress Provided.

The Supremacy Clause, at the very least, means that states lack the power to override Congress' choice by forcing plaintiffs to resort to a different one. Regardless of the state interests the substitute serves, *Congress* provided for suits against state employees, including suits for compensatory and punitive damages, and further provided for attorney fee awards to enable victims to press their claims. The majority's reasoning below – and the New York Attorney General's argument – that the New York legislature preferred a different solution than the one Congress devised is necessarily unavailing. *Chamber of Commerce v. Brown*, 128 S. Ct. at 2414; *Howlett*, 496 U.S. at 371; *Felder*, 487 U.S. at 143;

Mondou v. New York, 223 U.S. 1, 57 (1912). "State courts simply are not free to vindicate the substantive interests underlying a state rule of decision at the expense of the federal right." *Felder*, 487 U.S. at 152.

Furthermore, and not surprisingly as the state's interests include protecting itself, New York's substitute for the rights Congress conferred provides little or none of the deterrence Congress intended and only a fraction of the relief *if successful* – while severely limiting the likelihood that such suits will be successful, or will be brought at all. *See, supra*, at 8-11. New York's absolution of its prison employees, who need not answer for their misconduct or even face up to it in court, eliminates the deterrence Congress intended.

The state's preclusion of punitive damages eliminates important relief available under federal law. The state's imposition of a very short notice requirement, its bar against attorney fee awards, and its assignment of decision making entirely to its own judges – instead of to the juries it entrusts with other compensation cases – considerably lessens the likelihood that those who are unlawfully harmed will be compensated *at all*. And the state's preclusion of equitable and compensatory relief in the same action imposes additional burdens on each individual victim reducing the probability that the full relief available under federal law will even be pursued. Moreover, because New York has ensured that its risks remain low, the likelihood that even the State will punish officials who abuse their power cannot be assumed.

At the very least, the state law is wholly insufficient to ensure the results Congress sought in enacting Section 1983 and other federal statutes.

Critically, however, the United States Constitution does not permit states to displace Congress' judgment about appropriate rights and remedies with substitutes of their own devise. A state rule that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of a federal law is preempted. *Livadas v. Bradshaw*, 512 U.S. 107, 120 (1994) (quotation marks omitted). The analysis required by the Supremacy Clause is *not* "an open-ended balancing act, simply weighing the federal interest against the intensity of local feeling," rather, it turns solely on *Congress'* purpose and actions. *Id.*

"When Congress, in the exertion of the power confided to it by the Constitution, adopted [Section 1983], it spoke for all the people and all the States, and thereby established a policy for all." *Howlett*, 496 U.S. at 371 (quoting *Mondou v. New York*, 223 U.S. 1, 57 (1912)). The policy Congress pursued in enacting that act, and the legislative choices it made, must "be respected . . . in the courts of the State" as well as in federal courts. *Id.*

New York's law stands as an obstacle to Congress' goal of adjusting the huge power imbalance between those acting "under color of state law" and those at risk of being victimized by their misconduct, because it wrests power back to state employees to act without legal consequence.

Moreover, it expressly precludes rights and remedies which Congress expressly conferred. The Court of Appeals' lauding of New York's "assumption of responsibility," J.A. 65, – albeit loaded with self-protection – is beside the point. The State of New York did not simply assume responsibility, it *displaced* the responsibility that Congress imposed and the remedy that Congress deliberately fashioned. *That* violates the Supremacy Clause.

II. NEW YORK'S GERRYMANDERING OF ITS JURISDICTION TO EXCLUDE SPECIFIC FEDERAL CLAIMS IS NOT PERMISSIBLE.

A. New York Has Provided Courts Adequate and Appropriate to Hear These Actions.

1. State power over the jurisdiction of its own courts is not boundless.

The State of New York – having created courts with jurisdiction over New York residents, over most Section 1983 cases and over tort claims generally – and the power to determine compensatory and punitive damages, attorney fee awards, and equitable relief in appropriate cases – may not constitutionally withdraw that jurisdiction from a subset of Section 1983 claims it views as bad policy.

"The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution." *McKnett*, 292 U.S. at 233.

The Supremacy Clause does not permit states to decline jurisdiction over federal claims because Congress' policy is "not in accord with the policy of the State." *Howlett*, 496 U.S. at 372-73 (quotation marks omitted).

This Court has consistently emphasized that states that have created courts that are "appropriate to the occasion" – *i.e.*, they have jurisdiction over similar issues and parties – must hear federal claims whether the state agrees they are good policy or not. *See, e.g., Mondou*, 223 U.S. at 57 (rejecting Connecticut's refusal to hear FELA actions because of contrary state policy on the ground that the state had courts of general jurisdiction); *Testa*, 330 U.S. at 394 (rejecting Rhode Island's refusal to hear treble damages claims under the Emergency Price Control Act because the state's courts heard similar claims for different relief for the same type of conduct and were therefore "adequate and appropriate" to adjudicate this claim).

Under the Supremacy Clause, states "cannot escape this constitutional obligation to enforce the rights and duties validly created . . . by the simple device of removing jurisdiction from courts otherwise competent." *Howlett*, 496 U.S. at 381 (quotation marks and citation omitted). Just as states may not evade the strictures of the Full Faith and Credit Clause or the Privileges and Immunities Clause, "the same is true with respect to a state court's obligations under the Supremacy Clause," because "[t]he force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'" *Id.* at 382-83.

States retain full power to bestow and withhold jurisdiction with respect to claims under their own law, but with respect to claims under federal law, only refusal of jurisdiction "because of a neutral state rule regarding the administration of the courts" is presumptively valid. *Id.* at 372, 373-75; *accord Johnson v. Frankell*, 520 U.S. 911 (1997) (upholding Idaho's interlocutory appeal rule because it was unrelated to any substantive judgment inconsistent with Congress' and was not outcome-determinative).

2. New York's courts have jurisdiction over the parties and similar claims.

New York has created courts appropriate to the occasion of hearing damages suits against state prison employees. New York, for example, has courts of general jurisdiction – New York's supreme courts – that hear similar claims and are empowered to provide all the types of relief Congress made available under Section 1983. *See* N.Y. Const., art. VI, §7(a) ("The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided."); *Pollicina v. Misericordia Hosp. Medical Ctr.*, 624 N.E.2d 974, 977 (N.Y. 1993) (noting New York's supreme courts' "inviolate authority to hear and resolve all causes in law and equity"); *Kagen v. Kagen*, 236 N.E.2d 475, 478 (N.Y. 1968) ("the Supreme Court is a court of original, unlimited and unqualified jurisdiction").

These courts have the power to hear lawsuits alleging wrongdoing by state employees under both state and federal law, including virtually identical claims. For example, these courts have jurisdiction over the very claims Haywood asserted *if* the suit is brought by the state's attorney general on behalf of the state rather than by a private party. N.Y. Correct. Law §24.

They also have the power to hear damages actions brought by *anyone* against any *other* state employees, including Section 1983 actions. *See, e.g., Farley v. Town of Hamburg*, 824 N.Y.S.2d 549 (N.Y. App. Div. 2006) (permitting §1983 action against a police officer for damages); *McCummings*, 580 N.Y.S.2d 931 (permitting §1983 action against transit authority employee for damages).

These courts even have jurisdiction to hear private civil actions against state corrections department employees, *if* (1) the actions allege conduct judged to be outside the scope of their employment and discharge of their duties as a matter of state law, *or* (2) the actions seek declaratory or injunctive relief. N.Y. Correct. Law §24(1).

In addition, these courts regularly hear the class of actions – tort claims – that this Court has repeatedly identified as comparable to Section 1983 claims. *See Felder*, 487 U.S. at 141, 146 n.3 (Section 1983 constitutional injuries have "common-law tort analogues" and a state rule that treats Section 1983 suits differently than it treats intentional torts is not neutral); *Imbler v. Pachtman*, 424 U.S. 409, 417

(1976) (Section 1983 "creates a species of tort liability").

Finally, there is no dispute that New York's courts have personal jurisdiction over the parties in this action pursuant to the state's rules of civil procedure, as all parties to these cases are residents of the State of New York. Thus, New York has already created courts adequate and appropriate for hearing federal damages actions against its prison employees.

B. New York's Statute Is Not a Neutral Rule.

1. New York's correction law lacks any of the attributes of neutral rules.

New York's correction law bears no resemblance to a neutral rule. To constitute a neutral procedural rule, New York's correction law must be "a neutral and uniformly applicable rule of procedure," *Felder*, 487 U.S. at 141, "rooted in policies unrelated to the definition of any particular substantive cause of action, that forms no essential part of the cause of action as applied to any given plaintiff," *id.* at 145 (quotations omitted).

New York's statute does not even arguably meet this neutrality standard. It does not apply uniformly; it applies only to damages claims against a particular group of the state's own employees. It is also very much rooted in polices that *are* related to a particular substantive cause of action. These policies are admittedly aimed at protecting a particular group of state employees from damages claims.

Indeed, the statute only barely, in name only, even purports to be a procedural rule governing the courts, as New York's own statutory classification underscores. The statute is not codified with rules governing court procedures. It is codified with the state's substantive laws governing its Department of Corrections.

New York's rule, however, fares no better if it is evaluated as a substantive rule. Only last Term in *Chamber of Commerce v. Brown*, this Court confirmed the centrality of the neutral rule standard in the context of state substantive rules governing the use of their own funds. The majority found the California funding restriction at issue invalid because it viewed the state statute as "a targeted negative restriction on employer speech about unionization" rather than a "neutral affirmative requirement that funds be spent solely for the purposes of the relevant grant or program." 128 S. Ct. at 2415. The two Justices that dissented expressed no quarrel with the neutrality standard; they disagreed only that it had not been met. *Id.* at 2421 (Breyer, J., dissenting) (arguing that the statute's purpose was to maintain "neutrality on *contested* labor matters" and it had no demonstrated impact on "expenditure of *nonstate* funds").

Even if jurisdiction rules were considered an entirely different category, New York's statute cannot constitutionally be applied to federal claims as a neutral rule. *Howlett* specifically identified the attributes of a neutral jurisdictional rule. A "neutral state rule regarding the administration of the courts" must "reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." 496 U.S. at 372, 381.

New York's statute has nothing to do with "concerns of power over the person and competence over the subject matter." New York's courts have power over the litigants here, and regularly hear almost identical cases. Correction Law §24 is not aimed at protecting New York's courts from being burdened with disputes that are unrelated to New York or with duplicative litigation. It is not aimed at avoiding inconsistent results, or ensuring that disputes are heard by courts familiar with their subject matter, or with any other goal "regarding the administration of the courts."

As New York's legislature, highest court, and Attorney General have repeatedly acknowledged, New York Correction Law §24 is intended to protect the state's corrections employees from private damages suits altogether and to offer an alternative, narrow state law right to victims (to obtain limited relief against the State under limited circumstances, by proceeding most often either *pro se* or with *pro bono* counsel).

Neutral jurisdictional rules are illustrated by the four state jurisdictional rules this Court has upheld as valid bases for declining to entertain a federal claim. *Howlett*, 496 U.S. at 374-75 (reviewing the first three – the fourth had not yet been decided – and noting that "Each of them involved a neutral rule of judicial administration," *id.* at 374).

The first of these neutral rules uniformly declined jurisdiction over cases in which neither party was a resident of the state. *Douglas v. New York, N.H. & H.R. Co.*, 279 U.S. 377 (1929). The second uniformly declined jurisdiction outside the geographical purview of courts afforded limited territorial jurisdiction. *Herb*, 324 U.S. 117. The third applied the subject-matter-neutral doctrine of *forum non conveniens* – ruled valid so long as the state declined jurisdiction over federal claims brought by non-residents for out-of-state disputes if "in similar cases" it "denies resort to its courts and enforces its policy impartially"). *Missouri ex rel. Southern Ry. Co*, 340 U.S. at 4. The fourth limited the appellate jurisdiction of the state's courts to final judgments, with minor exceptions. *Johnson v. Frankell*, 520 U.S. 911.

Johnson v. Frankel found Idaho's appellate jurisdiction rule neutral because: (1) the rule reflected concern with the administration of the state's courts by avoiding piecemeal review; (2) it applied to the vast majority of interlocutory orders; (3) it was not outcome-determinative because it did not determine the ultimate disposition of the case, and (4) it did not target civil rights claims against the State, unlike the notice-of-claim rule at issue in *Felder v. Casey*. 520 U.S. at 918 & n.9, 919-21. Indeed, the Court noted that the rule subjected Idaho and its employees to possible "overenforcement of federal rights" under Section 1983 because it postponed review of their qualified immunity defense until the trial court issued a final judgment. *Id.* at 919-20.

New York's correction law lacks every one of these key characteristics. It does not reflect concern for the administration of the courts, as explained above. It applies to only a tiny fraction of otherwise similar claims. It *does* determine the ultimate disposition of the case because it requires immediate, and permanent, dismissal. And it targets civil rights claims against the State *in the same way* that the notice-of-claim rule at issue in *Felder* did – by targeting claims against state employees.

2. Instead, the statute resembles those rules the Supremacy Clause does not permit to be applied to federal claims.

Unlike any of the state statutes upheld as neutral rules, New York's correction law is addressed to a limited subset of claims defined by the plaintiff, the defendant, the relief requested, and the specific allegations. It excises jurisdiction only if the plaintiff is a private party, the defendant is a state prison employee, the action seeks damages, and the conduct at issue is adjudged to be within the scope of the defendant's state employment and in the discharge of his state employment duties (as determined under state law). Further distinguishing New York's statute from any of the statutes upheld as neutral rules, the state legislature enacted the law to pursue a policy contrary to Congress'.

New York's correction law, therefore, has all the indicia of the state rules this Court has found inapplicable to federal claims under the Supremacy Clause "whether the question is framed in preemption terms" or "in the obligation to assume jurisdiction over a 'federal' cause of action." *Howlett*, 496 U.S. at 375.

For example, New York's statute has the same "defendant-specific focus" as the notice-of-claim requirement *Felder* decided could not be applied to Section 1983 claims, noting that this focus "serves to distinguish it, rather starkly, from rules uniformly applicable to all suits . . . ." 487 U.S. at 145. The New York "law's protection extends only to governmental defendants" and therefore shields "the very persons and entities Congress intended to subject to liability." *Id.* at 144-45. This "burdening of a federal right" is therefore "not the natural or permissible consequence of an otherwise neutral uniformly applicable state rule." *Id.* at 144.

Likewise, it "is imposed only upon a specific class of plaintiffs – those who sue governmental defendants," like the notice requirement *Felder* found preempted. *Id.* at 145. Moreover, here, New York permits its own Attorney General to sue such defendants for damages over such conduct, but not private parties.

New York's statute also "predictably produce[s] different outcomes in §1983 litigation based solely on whether the claim is asserted in state or federal court," because claims asserted in state court will inevitably be dismissed at the outset, and claims asserted in federal court will be considered. *Id.* at 138. This Court ruled that even the rule at issue in *Felder* which only "frequently" would produce different outcomes, *id.* – compared to New York's which *necessarily* produces different outcomes – is impermissible because a "law that predictably alters the outcome of §1983 claims depending solely on whether they are brought in state or federal court within the same State is obviously inconsistent with th[e] federal interest in intra-state uniformity." *Id.* at 152.

"States may not apply such an outcome-determinative law when entertaining substantive federal rights in their courts." *Id.* at 141. *See also Johnson v. Frankell*, 520 U.S. at 920-21 (confirming *Felder*'s focus on the outcome-determinative nature of the state rule and explaining that the Idaho rule at issue was a permissible neutral rule because it would not "produce a final result different from what a federal ruling would produce.")

Most importantly, New York's statute is premised on the state's view that suits Congress expressly permits are bad policy. This Court has repeatedly ruled that such rules may not be applied to defeat federal claims.

Testa v. Katt, for example, found a Rhode Island withdrawal of jurisdiction premised in established state policy inapplicable to federal claims because "a state court cannot refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers." 330 U.S. at 393 (quotation marks omitted). As here, the Rhode Island courts had adequate and appropriate jurisdiction and could hear similar claims requesting different relief. *Id.* at 394.

The state law that *Felder* ruled inapplicable to federal claims was also "firmly rooted in policies very much related to, and to a large extent directly contrary to, the substantive cause of action provided those plaintiffs." 487 U.S. at 145. *Howlett* as well rejected a state rule that was said to be based on Florida's "ancient common-law heritage." 496 U.S. at 383 ("as to persons that Congress subjected to liability, individual States may not exempt such persons from federal liability by relying on their own common-law heritage"). The Court emphasized that state *policy* is no defense. *Id.* at 371 ("The suggestion . . . therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible").

Thus, the state rules analogous to the New York statute are those this Court has consistently ruled may not constitutionally be applied to federal claims.

3. The statute cannot be saved as a means of excluding frivolous actions.

Whether New York's Attorney General, and possibly the court below, are correct that the legislature's purpose is also to weed out meritless prisoner suits, *see* NYAG Cert. Opp'n 10 and J.A. 69, the statute is not a neutral method of doing so. Nothing in the statute provides the state's courts with any power to sift through claims to determine whether they have merit or not. To the contrary, the statute requires dismissal of valid and important prisoner suits along with those that lack merit. It also requires dismissal of damages actions brought by visitors to prisons or by state corrections employees against their supervisors, regardless of the merits of each action.

This Court has addressed questions of states' power to protect their courts and employees from frivolous suits and has repeatedly explained that the neutral rule requirement applies with full force. *Howlett*, for example, rejected such a defense of the Florida rule at issue because a state's power to "adopt neutral procedural rules to discourage frivolous litigation of all kinds" does not permit a state to "declar[e] a whole category of federal claims to be frivolous." 496 U.S. at 380.

Burnett v. Grattan also specifically rejected such a defense of a state rule applicable solely to Section 1983 claims, because the contention that "some reasonable protection from the seemingly endless stream of unfounded . . . lawsuits" is needed "reflects in part a judgment that factors such as minimizing the diversion of state officials' attention from their duties outweigh the interest in providing [claimants] ready access to a forum to resolve valid claims." 468 U.S. 42, 54, 55 (1984). "That policy is manifestly inconsistent with the central objective of the Reconstruction-Era civil rights statutes." *Id.* at 55, *accord Felder*, 487 U.S. at 149-150.

Congress' more recent promulgation of special procedural rules for prisoner suits, designed to "filter out the bad claims and facilitate consideration of the good," does not change the impermissibility of New York's alleged approach. *Jones v. Bock*, 127 S. Ct. 910, 926 (2007) (reversing Sixth Circuit decision because that court had imposed rules to implement these provisions that were "different and more onerous" than those Congress chose). *Congress* determined which methods were consistent with its purposes, and New York's correction law bears no resemblance to the methods Congress permits. New York requires its courts to dismiss virtually every single prisoner damages action – without *any* review of the merits of the claim. In contrast, Congress provided for early judicial screening of the merits and dismissal *only* of those claims that are frivolous, malicious, fail to state a claim or are barred by immunity under federal law. New York has no authority to disregard the balance among deterrence, redress and early dismissal of frivolous suits that Congress carefully chose.

C. The Statute Is Not "Neutralized" By Its Application to Identical Subsets of State and Federal Claims.

The decision below erred in confining neutrality to a simple requirement that states must enforce the same substantive policy judgments with respect to both state and federal claims. This left New York with the power to resist federal law with which it disagreed, by carefully excising a narrow sliver of claims from its courts' jurisdiction.

The decision turns the supreme law of the land into a menu from which states may freely pick and choose, depending on their own priorities and views. If they agree with Congress, their own laws will – or can easily be made to – impose the same rule on state claims. If they conclude that Congress has taken a foolish or dangerous path, they can insulate their resistance by avoiding the same path under state law.

This crabbed reading of neutrality is also wholly inconsistent with this Court's precedent. Although some of the state rules the Court has found inapplicable to federal claims under the Supremacy Clause have applied solely to federal or "foreign" claims; others have applied equally to both state and federal claims within their scope.

The California statute that *Martinez* ruled could not constitutionally be applied to §1983 claims was a statute the state applied identically to both state and federal claims against the same government officials. 444 U.S. at 279, 284 (explaining that the statute "is valid when applied to claims under state law," but "does not control [the §1983] claim even though the federal cause of action is being asserted in the state courts").

Likewise, the Pennsylvania rules that *Monessen Southwestern Railway Co.* concluded "were improperly applied to this FELA action" were rules the state applied identically to both state and federal claims. 486 U.S. at 342.

The Wisconsin procedural rule that *Felder* ruled "must give way to vindication of the federal right when that right is asserted in state court" was also a rule the state applied identically to both state and federal claims. 487 U.S. at 153.

Furthermore, *Howlett* specifically confirmed that the result in *Felder* would have been exactly the same if the Wisconsin rule had been fashioned as a jurisdictional rule, like New York's. Indeed, the Court expressly noted that Wisconsin could not salvage the notice requirement at issue in *Felder* by amending it "to provide that no state court would have jurisdiction of an action in which the plaintiff failed to give the required notice." 496 U.S. at 383.

Howlett also clarified – with respect to the Florida rule before it – that the disparity between its application to state and federal claims was not the *sine qua non* of its ruling that the rule was invalid as to federal claims. As *Howlett* explained: "To the extent that the Florida law . . . reflects a substantive disagreement with the extent to which governmental entities should be held liable for their constitutional violations, that disagreement cannot override the dictates of federal law." 496 U.S. at 377-78.

New York's statute similarly reflects a substantive disagreement with the extent to which certain governmental employees should be held liable for their constitutional violations. It is not neutral in form, effect, or purpose. That New York applies it to the identical sliver of state and federal claims, in pursuit of the same substantive goals, should not have saved it. "The Supremacy Clause requires more than that." *Howlett*, 496 U.S. at 383.

CONCLUSION

For the reasons stated above, the judgment of the New York Court of Appeals should be reversed.

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RESPONDENT'S BRIEF

16

No. 07-10374

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

KEITH HAYWOOD,

Petitioner,

v.

CURTIS DROWN *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

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QUESTION PRESENTED

New York Correction Law § 24 provides that New York State courts lack jurisdiction over *all* private damages claims against correction employees in their personal capacity for acts or omissions within the scope of employment and in the discharge of their duties, whether arising under state or federal law, and substitutes a state court damages remedy directly against the State in the New York State Court of Claims. The question presented is whether that statute violates the Supremacy Clause of the United States Constitution, art. VI, cl. 2, insofar as it applies to damages claims under 42 U.S.C. § 1983.

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STATEMENT OF THE CASE

A. New York State Court Jurisdiction Over Claims Arising From The Conduct Of Correction Officers And Employees

1. New York Correction Law § 24 and Its Predecessor

For over 60 years, New York State has assigned to its Court of Claims rather than its Supreme Court, New York's trial court of general jurisdiction, damages claims arising from the conduct of certain correction officers and employees in the discharge of their official duties.[1] In 1947, the New York Legislature provided that "[n]o civil action shall be brought in any court against [specified officers and employees of the corrections department] for alleged damages because of any act done or failure to perform any act, while discharging his official duties" and that "[a]ny just claim for damages against [such officers and employees] for which the state would be legally or equitably liable, shall be brought and maintained in the court of claims as a claim against the state." 1947 N.Y. Laws 367 (codified as (former) Correction Law § 6-b). To assure that claims proceeding in Supreme Court covered only those damages actions in which the correction employee's act was so clearly outside the scope of employment that it did not qualify as an act "for which the state would be legally or equitably liable," the statute also provided that a damages action against a covered employee could proceed in Supreme Court only with "leave of judge of a supreme court, first had and obtained." *Id.*[2] The statute initially covered only "an officer or employee of a state institution for criminally insane or mentally defective persons in the [corrections] department," along with the commissioner and deputy commissioner of correction. The law was subsequently extended to damages actions against officers or employees of any state "prison or reformatory," 1962 N.Y. Laws 435, and then to damages actions against officers and employees in any institution in the corrections department. 1970 N.Y. Laws 475, 476 (renumbering the provision as Correction Law § 24).

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[1] The New York State Department of Correctional Services employs both correction officers and civilian employees. The phrase "correction employee" hereinafter refers to both.

In 1972, the Legislature revised and restated the statute pursuant to a recommendation of a select state committee. *See* Select Committee on Correctional Institutions and Programs, Report No. 2, at 23 (March 15, 1972). In addition to re-enacting the principles of the former provision, *see supra,* at n.1, the 1972 legislation also authorized the State to defend and indemnify correction officers and employees for damages actions in federal court. *Id.*[3] The language enacted in 1972 remains in force today, establishing a jurisdictional bar in New York courts to private damages claims against correction employees in their personal capacities for acts or omissions within the scope of employment and in the discharge of their duties:

---

[2] That "leave of court" was intended to be granted only in such circumstances is confirmed by the fact that when the Legislature re-enacted the law in its current form in 1972, it replaced the "leave of court" requirement with language making explicit that the statute covers only damages actions "arising out of [acts or omissions] within the scope of the employment" of the correction employee. 1972 N.Y. Laws 283 (codified as Correction Law § 24 and reproduced infra, at 3). The 1972 law was described by the select state committee that recommended it as a "re-enactment of principles set forth in [the former provision]." Select Committee on Correctional Institutions and Programs, Report No. 2, at 23 (March 15, 1972).

> **Civil actions against department personnel**
>
> 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

1972 N.Y. Laws 283.[4]

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[3] In 1978, the Legislature replaced those department-specific defense and indemnification provisions with uniform provisions for the State's defense and indemnification of all state employees. 1978 N.Y. Laws 466 (codified at New York Public Officers Law § 17).

[4] In 1977, when the Legislature removed parole operations from the Department of Correctional Services and established

(Cont'd)

2. The New York State Court of Claims

The New York State Court of Claims is a court of limited jurisdiction that hears damages claims against New York State as provided by the New York Legislature. N.Y. Const. art. VI, § 9; N.Y. Court of Claims Act § 9. The State has waived its sovereign immunity from liability for actions brought in compliance with the requirements of the Court of Claims Act. N.Y. Court of Claims Act § 8. These requirements include the filing of a timely notice of claim or notice of intention to file a claim, *id.* § 10, as well as compliance with certain pleading standards, *id.* § 11. The State's waiver of immunity does not include liability for punitive damages. *Sharapata v. Town of Islip*, 56 N.Y.2d 332, 437 N.E.2d 1104 (1982). Claims are determined by bench trial, New York Court of Claims Act § 12, and an attorney's fee award is authorized only in certain circumstances, *id.* § 27. The Court of Claims lacks jurisdiction to grant strictly equitable relief. *Psaty v. Duryea*, 306 N.Y. 413, 118 N.E.2d 584 (1954). The court's jurisdiction includes constitutional tort claims implied for violations of the New York State Constitution. *Brown v. State of New York*, 89 N.Y.2d 172, 674 N.E.2d 1129 (1996). While the *Brown* Court did not

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(Cont'd)

a separate Division of Parole, it also enacted an identical jurisdictional provision for claims against employees of the Division of Parole. 1977 N.Y. Laws 904 (codified at N.Y. Executive Law § 259-q). Likewise, when the Legislature established the New York Office of Alcoholism and Substance Abuse in 1977, it enacted an identical provision covering employees charged with the duty of securing a person in need of treatment for alcoholism. 1977 N.Y. Laws 978 (codified at N.Y. Mental Hygiene Law § 19.14).

address the court's jurisdiction over analogous claims implied for violations of the federal Constitution, nothing in *Brown* precludes applying a similar analysis to such claims.

B. Proceedings Below

1. Plaintiff's Complaints

Plaintiff is a prisoner in New York's Attica Correctional Facility, serving a sentence of 15 to 30 years as a second violent felony offender for his 1990 conviction of one count of escape and eight counts of robbery. This case arises from two actions filed by him in New York State Supreme Court, Wyoming County, against several correction employees for damages in connection with three prisoner disciplinary proceedings and an alleged altercation. J.A. 5-22.

In the first action, plaintiff sues a hearing officer who found him guilty of improper mail solicitation after a disciplinary hearing. J.A. 16-22. Plaintiff alleges that the hearing officer was biased, that he based the determination on insufficient evidence and that he imposed a penalty intended to censor plaintiff in violation of his First Amendment rights. J.A. 20. Plaintiff seeks damages under 42 U.S.C. § 1983 to redress these alleged violations of his rights. J.A. 21.

In the second action, plaintiff sues five correction employees in connection with two disciplinary determinations rendered against him, one finding him guilty of assaulting a correction officer, and the other finding him guilty of drug use. J.A. 5-15. Regarding the assault, plaintiff alleges that several correction officers fabricated a misbehavior report after one of them grabbed him without justification and caused a "minor injury to his left pinkie finger." J.A. 8, 11. Regarding the drug offense, plaintiff claims that the officers tampered with his urinalysis test. J.A. 11. Plaintiff seeks damages under both 42 U.S.C. § 1983 and state law for these actions. J.A. 11-14.

Defendants in both cases moved to dismiss the complaints on the ground that the New York Supreme Court -- the state trial court of general jurisdiction — lacked jurisdiction over plaintiff's claims, state and federal, under New York Correction Law § 24. Supreme Court agreed and dismissed the complaints on this basis. J.A. 34-37. The New York Appellate Division, Fourth Department, affirmed, rejecting plaintiff's contention that section 24 violates the Supremacy Clause insofar as it deprives New York Supreme Court of subject matter jurisdiction over his damages claims under 42 U.S.C. § 1983. J.A. 42-44.

2. The New York Court of Appeals' Decision

The New York Court of Appeals affirmed the dismissal of the complaints. It held that Correction Law § 24 does not violate the Supremacy Clause by barring state court jurisdiction over all damages claims against correction employees in their personal capacities arising from acts within the scope of employment, whether brought under state or federal law. J.A. 55-83.

The Court of Appeals stressed that states have broad sovereign authority to establish the structure and jurisdiction of their courts. J.A. 61. The court held that section 24 governs the subject matter jurisdiction of New York's courts, rejecting plaintiff's argument that the statute confers an immunity. J.A. 63-64, 66-67. The court explained that "[t]he statute, by emphasizing that '[n]o civil action shall be brought in any court of the state,' creates a neutral jurisdictional barrier to all claims — state and federal — for monetary damages in a state court against any correction officer in his or her personal capacity for actions within the scope of employment." J.A. 63.

In section 24, the court stated, "the New York Legislature has recognized that the State of New York is, in effect, the real party in interest when there is a challenge to a correction officer's alleged conduct arising from the discharge of official duties" and thus it reasonably provided a damages remedy directly against the State in the Court of Claims. J.A. 65.

> By restricting the forum for a certain type of claim to a particular state court, the Legislature did nothing more than exercise its prerogative to establish the subject matter jurisdiction of state courts in a manner consistent with New York's conditional waiver of sovereign immunity, which does not allow civil rights claims to proceed against the state in Supreme Court.

J.A. 65-66.

The Court of Appeals explained that the Supremacy Clause does not invalidate a state's limitation on the jurisdiction of its own courts that "does not discriminate against federal claims in favor of analogous state claims." J.A. 62. Thus, "if a state court opens its doors to a state cause of action, it must also allow related federal claims to be heard . . . . But if a state does not extend jurisdiction to its courts to litigate a certain type of claim, it may deprive those courts of jurisdiction over a related federal claim." J.A. 62-63. The court stressed that section 24 "applies with equal force to all state and federal claims based on the identity of the defendant and the alleged conduct at issue." J.A. 64. Thus, "because Correction Law § 24 does not treat section 1983 claims differently than it treats related state law causes of action, the Supremacy Clause is not offended." J.A. 64.

To be sure, the result is to make a section 1983 claim for torts committed by correction employees unavailable in state court, but this is due not to any discrimination against those claims by the New York Legislature, but rather to the decision of Congress not to authorize suits against a state under section 1983. J.A. 66. Thus, the unavailability of a section 1983 claim in the New York Court of Claims presents no Supremacy Clause violation.

The Court of Appeals concluded that "[i]n the end, New York does not discriminate against section 1983 actions in favor of analogous state law claims because Correction Law § 24 removes subject matter jurisdiction over any cause of action — state or federal — for money damages in state Supreme Court for conduct by [correction] employees" within the scope of employment. J.A. 66-67. Under these circumstances, the court held, the Supremacy Clause has not been violated.

SUMMARY OF THE ARGUMENT

New York State Correction Law § 24 constitutes a valid exercise of New York's broad sovereign authority to establish the structure and subject matter jurisdiction of its own courts. An essential attribute of sovereignty retained by the States is the authority to establish state courts and allocate judicial business among them in the furtherance of state policies. Congress has no power to dictate the jurisdiction of state courts.

Correction Law § 24 regulates the subject matter jurisdiction of New York's courts in a manner that furthers New York's legitimate interests in sound judicial and prison administration. In New York, damages claims arising from the performance by correction employees of their official duties are numerous, and many of them are meritless and vexatious. Moreover, they are in effect suits against the State, because under state indemnification law, the State will ultimately pay any judgment. By requiring these suits to be brought directly against the State in the New York Court of Claims, the statute promotes efficient judicial administration in two respects. First, it relieves a drain on the finite resources of New York's busy Supreme Court, and diverts this litigation to the New York court with the exclusive function and special expertise in adjudicating damages claims against the State arising from the official conduct of state employees. Second, by removing the correction employee as the defendant, the statute minimizes the disruptive effect of these claims on the employees who operate correctional institutions, while preserving the availability of damages to litigants with meritorious claims.

The Supremacy Clause does not necessarily require a state to maintain a court competent to hear a federal claim. In prior decisions, this Court has struck a careful balance between the supremacy of federal law and the States' sovereign autonomy to control the jurisdiction of their own courts. Where a state endows a court with jurisdiction to entertain certain state law claims, the court cannot refuse to hear analogous federal claims on policy grounds. Congress's enactment of a federal right of action, however, does not override state jurisdictional provisions that do not discriminate against federal claims. This Court has never held that in structuring the jurisdiction of its own courts, a state must discriminate *in favor* of federal claims.

Correction Law § 24 passes muster under the Supremacy Clause because it dictates the subject matter jurisdiction of New York courts in a manner that does not discriminate against section 1983 or other federal claims. Under section 24, New York courts lack jurisdiction to hear *any* damages claims — whether arising under state or federal law — against correction employees personally for acts or omissions in the scope of employment. The statute does not single out section 1983 or other federal claims and reflects no hostility to section 1983 claims because of their federal source. The provision respects the primacy of federal law by preserving the right to obtain injunctive relief in New York Supreme Court against correction employees to correct ongoing violations of federal law. It also reserves jurisdiction in that court over damages actions against correction employees in their personal capacities for acts that are outside the scope of employment, the cases in which punitive damages are most likely to be appropriate.

Moreover, in section 1983, Congress did not even purport to override the States' historic sovereign authority to structure the jurisdiction of their own courts, and the history of the statute's enactment belies any such intent. This Court should not presume that Congress intended to intrude on New York's core sovereign authority to regulate the jurisdiction of its courts, and Correction Law § 24 should therefore be upheld.

ARGUMENT

I. CORRECTION LAW § 24 REPRESENTS A CONSTITUTIONAL EXERCISE OF NEW YORK STATE'S CORE SOVEREIGN AUTHORITY TO ESTABLISH THE STRUCTURE AND JURISDICTION OF ITS COURTS

When preemption of a state court jurisdictional statute is at issue, this Court "respect[s] the 'principles [that] are fundamental to a system of federalism in which the state courts share responsibility for the application and enforcement of federal law.'" *Johnson v. Fankell*, 520 U.S. 911, 922 (1997) (quoting *Howlett v. Rose*, 496 U.S. 356, 372-73 (1990)). This respect "is at its apex when [the Court] confront[s] a claim that federal law requires a State to undertake something as fundamental as restructuring the operation of its courts." *Id.* These principles afford the States "great latitude to establish the structure and jurisdiction of their own courts." *Howlett*, 496 U.S. at 372.

A. An Essential Attribute Of State Sovereignty Is The Authority To Establish And Regulate The Jurisdiction Of State Courts.

In our federal Constitution, "[t]he Framers split the atom of sovereignty." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). The federal system established by the Constitution reserves to the States "a substantial portion of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status." *Alden v. Maine*, 527 U.S. 706, 714 (1999). Thus, "[t]he States 'form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.'" *Id.* (quoting The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison)). The constitutional role of the States as sovereign entities is confirmed by the Tenth Amendment, providing that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X; *see Alden*, 527 U.S. at 713-14. Fundamentally, "[a] State is entitled to order the processes of its own governance." *Id.* at 752; *see also Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (federalist structure of joint sovereigns "allows for more innovation and experimentation in government").

Congress's enumerated powers do not authorize it to determine state court jurisdiction in the first instance or to expand that jurisdiction beyond that conferred by state law. As long ago as *Houston v. Moore*, 18 U.S. (5 Wheat.) 1 (1820), it was "perfectly clear, that Congress cannot confer jurisdiction upon any Courts, but such as exist under the constitution and laws of the United States, although the State Courts may exercise jurisdiction on cases authorized by the laws of the State, and not prohibited by the exclusive jurisdiction of the federal Courts." *Id.* at 27-28; *see also Claflin v. Houseman*, 93 U.S. 130, 141 (1867) ("[n]ot that Congress could confer jurisdiction upon the State courts"); *Brown v. Gerdes*, 321 U.S. 178, 188 (1944) (Frankfurter, J., concurring) ("Neither Congress nor the British Parliament nor the Vermont Legislature has power to confer jurisdiction upon the New York courts.").[5] A law by which Congress purported to define the jurisdiction of state courts would not be a "Law[] of the

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[5] As Justice Story explained, "Congress may, indeed, permit the state courts to exercise a concurrent jurisdiction in many cases; but those courts then derive no authority from congress over the subject-matter, but are simply left to the exercise of such jurisdiction, as is conferred on them by the state constitution and laws." 3 J. Story, Commentaries on the Constitution of the United States § 1749 (1833); *see also* 2 J. Kent, Commentaries on American Law 403 (12th ed. 1896) ("The doctrine seems to be admitted, that Congress cannot compel a state court to entertain jurisdiction in any case. It only permits state courts which are competent for the purpose, and have an inherent jurisdiction adequate to the case, to entertain suits in the given cases; and they do not become inferior courts in the sense of the Constitution, because they are not ordained by Congress. The state courts are left to infer their own duty from their own state authority and organization.")

United States which shall be made in Pursuance [of the Constitution]" within the meaning of the Supremacy Clause. *See Alden*, 527 U.S. at 731 ("As is evident from its text . . . , the Supremacy Clause enshrines as 'the supreme Law of the Land' only those federal Acts that accord with the constitutional design.").

Thus, an essential attribute of sovereignty reserved to the States is the authority to establish the structure and jurisdiction of their own courts. *See Atlantic Coast Line RR. Co. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 285 (1970) ("One of the reserved powers was the maintenance of state judicial systems for the decision of legal controversies."). "Mr. Chief Justice Jay described sovereignty as the 'right to govern,'" a right that "would necessarily encompass the right to determine what suits may be brought in the sovereign's own courts." *Nevada v. Hall*, 440 U.S. 410, 415 (1979) (quoting *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 472 (1793)); *see also Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981) ("Federal law confers rights binding on state courts, the subject-matter jurisdiction of which is governed in the first instance by state laws."). Accordingly, this Court has "made it quite clear that it is a matter for each State to decide how to structure its judicial system." *Johnson*, 520 U.S. at 922 n.13.

B. Correction Law § 24 Regulates The Jurisdiction Of New York's Courts To Further New York's Interests In Sound Judicial Administration.

The purpose and effect of Correction Law § 24 is to divert damages actions arising from conduct by correction employees from New York's trial court of general jurisdiction to its Court of Claims. The statute is an unambiguous exercise of authority by the New York Legislature to determine which courts should hear which cases. Under the New York Constitution, the Supreme Court is New York's court of general original jurisdiction, N.Y. Const. art. VI, § 7, but the New York Legislature has the power to "alter and regulate" that jurisdiction, N.Y. Const. art. VI, § 30, and specifically to assign to the Court of Claims jurisdiction over claims against or by the State. N.Y. Const. art. VI, § 9. Thus, the Legislature "may award jurisdiction to other tribunals, change or abolish common-law causes of action or substitute new remedies." *Motor Vehicle Mfrs. Ass'n v. State of New York*, 75 N.Y.2d 175, 184, 550 N.E.2d 919, 923 (1990).

Pursuant to this authority, the New York Legislature enacted Correction Law § 24 to regulate the jurisdiction of New York's Supreme Court, by diverting from that court to the Court of Claims damages claims arising from the acts or omissions of correction employees within the scope of their employment. As the Court of Appeals observed, section 24 regulates subject matter jurisdiction and does not purport to grant an immunity. J.A. 66-67.

> The statute, by emphasizing that '[n]o civil action shall be brought in any court of the state,' creates a neutral jurisdictional barrier to all claims — state and federal — for monetary damages in a state court against any correction officer in his or her personal capacity for actions within the scope of employment.

J.A. 63. This interpretation of the statute by New York's highest court is entitled to deference. *See Johnson*, 520 U.S. at 916 ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the state.").[6] Moreover, the state court's view of the statute as jurisdictional is correct. By its terms, as plaintiff acknowledges (Br. 21), the statute requires every New York court to dismiss a covered damages action against a correction employee for lack of jurisdiction, before even considering any immunity that might be available. This limitation on subject matter jurisdiction, unlike an immunity defense, can be invoked by the court *sua sponte* and cannot be waived. *See Matter of Fry v. Village of Tarrytown*, 89 N.Y.2d 714, 718, 680 N.E.2d 578, 580 (1997).

Plaintiff suggests that section 24 is not a genuine jurisdictional limitation, but rather a substantive limitation masquerading as a jurisdictional one, like the rule invalidated by this Court in *Howlett*, 496 U.S. at 383 (Br. 28-29, 32). He is mistaken. In *Howlett*, Florida had purported to cloak a school board with sovereign immunity to a section 1983 action, although the board was otherwise subject to suit in state court. This Court invalidated the immunity, explaining that a state could not avoid its obligation to enforce federal law simply by labeling the rule jurisdictional. 496 U.S. at 381-82.[7] "The fact that a rule is denominated jurisdictional does not provide a court an excuse to avoid the obligation to enforce federal law if the rule does not reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." *Id.* at 381.

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[6] While some legislators have characterized the statute as one that provides "immunity," that mistaken description, which appears in a memorandum relating to a bill that was never enacted, cannot properly be attributed to "the state legislature" (see Pet. Br. 19), nor can it displace the authoritative construction of the statute by the State's highest court.

New York Correction Law § 24, in contrast, concerns precisely the "competence over the subject matter that jurisdictional rules are designed to protect." *Howlett*, 496 U.S. at 381. It deprives New York courts of the power to hear private damages claims against individual correction employees when the subject matter involves acts or omissions within the employees' scope of employment. The jurisdictional nature of the rule is confirmed by section 24(2), which assigns to the Court of Claims exclusive jurisdiction to entertain a claim for damages based on conduct covered by section 24(1). Thus, the statute removes such claims from the court of general jurisdiction and assigns them to another court, where a remedy is available in the form of a damages action against the State. As a result, pursuant to the New York Constitution and a statute enacted under constitutional authority, Supreme Court's ordinary jurisdiction does not include jurisdiction over these individual damages claims. *See Printz v. United States*, 521 U.S. 898, 906 n.1 (1997) ("the States obviously regulate the 'ordinary jurisdiction' of their courts"); *see also Woodward v. State of New York*, 23 A.D.3d 852, 855-56, 805 N.Y.S.2d 670, 673 (N.Y. App. Div. 2005) (holding section 24 a valid jurisdictional statute under the New York Constitution), *appeal dismissed*, 6 N.Y.3d 807, 845 N.E.2d 1276 (2006).

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[7] Indeed, even Florida's courts did not uniformly view the state-law sovereign immunity defense as "jurisdictional." *See* 496 U.S. at 361 n.5. At least one Florida appellate court had "come to the opposite conclusion." *Id.*

New York enacted section 24 to further its interests in sound judicial and prison administration. The damages actions governed by this statute arise out of events in and around prisons. While such actions apparently include actions by correction employees against other correction employees,[8] it is reasonable to assume that the overwhelming majority are claims by prisoners against correction employees. As this Court has recognized, damages claims by prisoners against correction employees, often brought *pro se*, are numerous and often frivolous. *See Jones v. Bock*, __ U.S. __, 127 S. Ct. 910, 914 (2007). By removing them from Supreme Court, section 24 eliminates the burden they would otherwise impose on the limited resources of New York's busy Supreme Court, a court with an extensive criminal and civil docket. Moreover, the burden on that court would not be imposed evenly throughout the State. Absent section 24, prisoner complaints would be concentrated in the counties where the most populous prisons are located, and perhaps in Albany, where the administrative offices of the Department of Correctional Services are located. They thus would impose an especially high burden on the Supreme Court in those counties. Taking note of these concerns does not in any way denigrate the importance of providing relief to those prisoners with meritorious claims. Rather, it serves to relieve a burden from the Supreme Court generally, and from the courts in particular that otherwise would receive the largest numbers of prisoner complaints and have to sift through them to identify the meritorious ones.[9] The statute channels this litigation instead to the New York court with exclusive jurisdiction to hear, and judges with primary expertise in adjudicating, damages claims against the State arising from the official conduct of state employees. *See* N.Y. Court of Claims Act § 9.

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[8] The Court of Appeals was not asked to address this issue in this case. However, in dicta it noted that the statute also governs damages actions by correction employees against supervisory officials, and cited an appellate division decision upholding the constitutionality of section 24 in such a context. J.A. 64 n.6 (citing *Woodward*, 23 A.D.3d at 853, 805 N.Y.S. 2d at 671).

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[9] Congress recognized and attempted to deal with the burdens imposed by voluminous and frequently frivolous prisoner litigation in the federal Prison Litigation Reform Act of 1995, 42 U.S.C. §§ 1997e *et seq.* In 1999, New York enacted a similar state statute to deal with the same problem. 1999 N.Y. Laws 412. *See* Governor's Program Bill Memorandum #76, 1999 N.Y. Legis. Ann. 233, 235 ("Increasingly, prisoners in New York are unnecessarily commencing vexatious lawsuits that clog our courts and drain precious judicial resources."). In explaining the need for the statute, the Governor noted that challenges to prison discipline, which unlike damages actions are heard in state Supreme Court, succeed in fewer than 1% of the cases. 1999 N.Y. Legis. Ann. at 234.

In requiring that the action be brought against the State rather than against the individual correction employee, section 24 simply recognizes that, as a result of New York's laws relating to indemnification, the State is the real party in interest with respect to these claims. New York generally indemnifies a correction employee for damages arising from the employee's discharge of official duties within the scope of employment.[10] A damages action against the State is the functional equivalent of a damages action against an employee who is indemnified by the State.

Section 24 also seeks to promote New York's interest in sound prison administration by minimizing the disruptive effect of damages claims by prisoners on the performance by correction employees of their official duties. Contrary to plaintiff's suggestion (Br. 18-20), that purpose is not inconsistent with Congress's purpose in enacting section 1983. Congress sought to provide a remedy for persons, including prisoners, whose constitutional rights were violated by state employees, presumably both to compensate for past harms and to deter future harms. There is no evidence that the congressional purpose is thwarted when states indemnify their employees or otherwise assume the burden of defending such claims. To the contrary, the damages remedy may be most effective in deterring future violations when the burden of defending actions and paying damages falls on a state, given a state's ability to prevent future violations by training and disciplining its employees. *See, e.g.*, Newman, ***Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers' Misconduct***, 87 Yale L.J. 447, 456-57 (1978) ("It would enhance the prospects for deterrence by placing responsibility for the denial of constitutional rights on the entity with the capacity to take vigorous action to avoid recurrence."). Thus, New York's decision to require all such claims to be brought as claims against the State in the Court of Claims is not contrary to the federal policy of providing a remedy and a deterrent for constitutional violations in section 1983.

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[10] *See* N.Y. Public Officers Law § 17(3)(a) (providing for the State's indemnification of its employees where "the act or omission from which [a] judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties").

New York's decision to channel damages actions against correction employees into the Court of Claims serves other important and legitimate state interests as well. The potential for damages actions against individual correction employees could threaten orderly administration of prisons in several respects. The burden of defending such actions and risking damages awards might deter people from accepting employment as correction employees, or inhibit them from taking appropriate action against prisoners. As this Court has recognized, "[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973). By requiring the claim to be brought directly against the State, the statute reduces the correction employee's involvement in the suit and diminishes a prisoner's ability to harass or inhibit an employee in official duties through personal damages actions, while preserving a damages remedy for the prisoner who has suffered a cognizable injury.

II. THE SUPREMACY CLAUSE DOES NOT REQUIRE NEW YORK COURTS TO ENTERTAIN DAMAGES CLAIMS AGAINST CORRECTION EMPLOYEES UNDER 42 U.S.C. § 1983 WHEN NEW YORK COURTS LACK JURISDICTION TO HEAR THE SAME TYPE OF CLAIM ARISING UNDER STATE LAW

The Supremacy Clause's "requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent to hear the case in which the federal claim is presented." *Howlett*, 496 U.S. at 372. The general rule is that "'federal law takes the state courts as it finds them.'" *Id.* (quoting Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954)). A state's authority over the jurisdiction of state courts is not unfettered by the federal Constitution, *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 233 (1934), and a state cannot avoid its constitutional obligations "by the simple device of removing jurisdiction from courts otherwise competent." *Howlett*, 496 U.S. at 381 (internal quotation marks omitted). But this Court has never held that the Supremacy Clause obligates state courts to entertain section 1983 or other federal claims in all instances. *See National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 587 n.4 (1995) ("We have never held that state courts must entertain § 1983 suits.").

Acting with "utmost caution," *Howlett*, 496 U.S. at 372, to balance the supremacy of federal law against the States' sovereign authority to control the jurisdiction of their own courts, this Court has held that the Supremacy Clause restrains a state from exercising state court jurisdiction in a manner that discriminates against federal claims. Correction Law § 24 respects this carefully delineated constraint.

A. The Supremacy Clause Is Not Offended By State Court Jurisdictional Rules That Do Not Discriminate Against Federal Claims.

This Court has long held that "if exclusive [federal court] jurisdiction be neither express nor implied, the State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it." *Claflin v. Houseman*, 93 U.S. 130, 136 (1876); *see Tafflin v. Levitt*, 493 U.S. 455, 458-60 (1990); The Federalist No. 82 (A. Hamilton). Thus, unless Congress confines jurisdiction to the federal courts either explicitly or implicitly, "[t]he federal right is enforceable in a state court whenever its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws." *Missouri ex rel. St. Louis, B. & M. Ry. Co. v. Taylor*, 266 U.S. 200, 208 (1924).

In a series of cases, this Court held that if a state court has adequate jurisdiction under state law and entertains analogous state law claims, it cannot refuse to entertain a federal claim on policy grounds. *See Mondou v. New York, N.H. & H.R.R. Co.*, 223 U.S. 1 (1912); *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230 (1934); *Testa v. Katt*, 330 U.S. 386 (1947).[11] In *Mondou*, the state court dismissed a claim under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, "not because the ordinary jurisdiction of the [state court], as defined by the constitution and laws of the State, was deemed inadequate or not adapted to the adjudication of such a case," 223 U.S. at 55, but because of prudential concerns arising from the court's disagreement with the federal policy and the resulting inconsistency of state law. The state court had reasoned that it would be "inconvenient and confusing" for state courts to have to apply federal law. *Id.* This Court observed that Congress had not purported "to enlarge or regulate the jurisdiction of state courts or to control

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[11] This was not always the Court's view. Early constitutional theory embraced the notion of dual sovereignty articulated in *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842), *Kentucky v. Dennison*, 65 U.S. (24 How.) 66 (1861), and *Collector v. Day*, 78 U.S. (11 Wall.) 113 (1871). Under this doctrine, "the state courts entertained federal actions solely as a discretionary 'matter of comity, which the several sovereignties extended to one another for their mutual benefit. It was not regarded by either party as an obligation imposed by the Constitution.'" *FERC v. Mississippi*, 456 U.S. 742, 763 n.28 (1982) (quoting *Dennison*, 65 U.S. (24 How.) at 109); *see also Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 821 (1824) (Marshall, C.J.) (state courts are "tribunals over which the government of the Union has no adequate control, and which may be closed to any claim asserted under a law of the United States"); *Michell v. Great Works Milling & Mfg. Corp.*, 17 F. Cas. 496, 499 (C.C.D. Me. 1843) (No. 9662) (Story, Circuit Justice) ("The states, in providing their own judicial tribunals, have a right to limit, control, and restrict their judicial functions, and jurisdiction, according to their own mere pleasure.").

or affect their modes of procedure." *Id.* at 56.[12] Rather, the case raised "only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws," to hear the federal claim. *Id.* at 56-57. The state court exercised its jurisdiction in analogous cases arising under its own law and other states' laws. *Id.* at 57. Because "[t]he existence of the jurisdiction creates an implication of duty to exercise it," the state court could not as a matter of discretion refuse to hear the federal claim. *Id.* at 58-59.

In *McKnett*, this Court reaffirmed that "[a] state may not discriminate against rights arising under federal laws." 292 U.S. at 234. In that case, a state court read its statutory authority as excluding power to hear a FELA claim against a foreign corporation for an injury suffered in another state, because it expressly granted jurisdiction only over claims arising under the common law or statute of the other state. *Id.* at 231-32. While "Congress ha[d] not attempted to compel states to provide courts for the enforcement" of the federal claim, the state court had jurisdiction in an analogous "class of actions . . . in cases between litigants situated like those in the case at bar." *Id.* at 232-33. Under these circumstances, the Constitution prohibited the state court from refusing to hear the claim "solely because the suit is brought under a federal law." *Id.* at 233-34.

This nondiscrimination principle was applied again in *Testa v. Katt*. There the state court declined to entertain a claim for treble damages under the federal Emergency Price Control Act, 50 U.S.C. § 925 (terminated 1947), because of a state policy against enforcement of federal or other states' statutes deemed to be "penal." 330 U.S. at 388, 392. The "same type of claim arising under [state] law would be enforced" by the state court, and thus the state court had "jurisdiction adequate and appropriate under established local law to adjudicate [the] action." *Id.* at 394. Citing *Mondou* and *McKnett*, this Court held that where the state court had adequate jurisdiction under state law, it could not "'refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers.'" *Id.* at 393 (quoting *Minneapolis & St. L.R. Co. v. Bombolis*, 241 U.S. 211, 222 (1916)).

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[12] This, the Court observed in *Howlett*, was "a matter of some significance." 496 U.S. at 373.

The holding in *Testa*, however, was limited to an instance in which adequate jurisdiction already existed under state law to entertain the federal claim. "[N]othing in *Testa* upset[] 'the traditional doctrine that Congress may not interfere with a state's sovereign right to determine and control the jurisdictional requirements of its own courts.'" *FERC v. Mississippi*, 456 U.S. 742, 773 n.4 (1982) (Powell, J., concurring in part and dissenting in part) (quoting Note, *Utilization of State Courts to Enforce Federal Penal and Criminal Statutes: Development in Judicial Federalism*, 60 Harv. L. Rev. 966, 971 (1947)). To the contrary, this Court confirmed in a series of cases involving claims under FELA that state courts may dismiss a federal claim pursuant to state jurisdictional limitations that apply evenhandedly to state and federal claims. *See Douglas v. New York, N.H. & H.R.R. Co.*, 279 U.S. 377 (1929); *Herb v. Pitcairn*, 324 U.S. 117 (1945); *Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1 (1950).

In *Douglas*, this Court upheld a state court's dismissal of a FELA claim pursuant to a New York statute permitting courts to dismiss either state or federal claims, in the court's discretion, when neither party to the claim resided in the State. Because the State had "manifest reasons for preferring residents in access to often overcrowded Courts," the Court held the application of the nondiscriminatory statute to be a "valid excuse" not to entertain the federal claim. 279 U.S. at 387-88.

Likewise, in *Herb*, the Court upheld a city court's dismissal of a FELA claim under a state statute that denied the court jurisdiction over a cause of action arising outside the court's territorial limits. This Court reiterated that "[t]he freedom of the state courts so to decide is, of course, subject to the qualification that the cause of action must not be discriminated against because it is a federal one." 324 U.S. at 123. Finding nothing to suggest that if the "cases had been brought under state statutes or common law they would not have been dismissed under the same circumstances," this Court upheld the state court's refusal where the state court had not "construed the state jurisdiction and venue laws in a discriminatory fashion." *Id.*

Finally, in *Mayfield*, this Court upheld the power of a state to refuse adjudication of a FELA claim under the state court's conception of *forum non conveniens*. The Court reaffirmed "the power of a State to deny access to its courts to persons seeking recovery under [a federal statute] if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially so as not to involve a discrimination against [federal] suits." 340 U.S. at 4 (citation omitted).

These decisions establish the principles governing a state court's authority or duty to hear federal claims. Under *Claflin* and its progeny, where federal court jurisdiction is not made exclusive, a state court is presumptively authorized to hear federal claims when it has adequate jurisdiction under the state's constitution and laws. Under *Mondou*, *McKnett* and *Testa*, a state court cannot discriminate against federal claims when its jurisdiction, as defined by state law, is adequate to adjudicate analogous state law claims. *See also Martinez v. California*, 444 U.S. 277, 283 n.7 (1980) ("where the same type of claim, if arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim"). However, under *Douglas*, *Herb* and *Mayfield*, the Supremacy Clause does not override a state court jurisdictional limitation that does not discriminate against federal claims; in that case, the limitation provides a valid excuse for not entertaining a federal claim.[13] These principles strike a careful balance between the supremacy of federal law and the States' retained sovereign autonomy to structure the jurisdiction of their own courts.

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[13] *See* Tribe, *American Constitutional Law*, at 1275 (3d ed. 2000) (suggesting that this Court "would find that state court systems are under no obligation to include a tribunal with the jurisdiction necessary to entertain claims against governmental entities, so long as the jurisdictional limitation is expressed in a way that does not discriminate against *federal* claims in particular.") (emphasis in the original).

Plaintiff relies heavily on this Court's decisions in *Martinez*, *Felder v. Casey*, 487 U.S. 131 (1988), and *Howlett*, but those cases have no application here. The state laws at issue in *Martinez* and *Felder* did not involve the fundamental authority of a state to establish the structure and jurisdiction of state courts, and therefore did not invoke the extreme deference due to that authority. And the state law in *Howlett*, which was arguably also not jurisdictional in nature, was in any event invalid because it applied restrictions to the federal cause of action that did not apply to similar state causes of action.

In *Martinez*, this Court stated that a state could not accept jurisdiction of a section 1983 claim against parole officials and then eviscerate it with a blanket immunity defense. 444 U.S. at 284-85. The Court specifically noted that the California courts had accepted jurisdiction of the federal claim, *id.* at 284 n.7, and consequently the state statute was not properly analyzed as an exercise of the state's authority to define the jurisdiction of its courts. (The Court ultimately reserved the question what immunity, if any, a parole official might have in a section 1983 action, because it found no constitutional violation in the allegation that parole officials had improperly released a prisoner who later murdered the plaintiffs' decedent. *Id.* at 284-85.)

Likewise in *Felder*, this Court held that a state could not accept jurisdiction of a section 1983 claim against police officers and then undermine it with a notice-of-claim rule that effectively imposed a very short statute of limitations and an onerous exhaustion requirement. 487 U.S. at 151-52; *see also Howlett*, 496 U.S. at 377 (characterizing *Felder*'s notice-of-claim rule). Here too, the Wisconsin courts had clearly accepted jurisdiction of the claim, and thus the state statute was not an exercise of the state's authority to define the jurisdiction of its courts.

Finally in *Howlett*, this Court held that a state could not undermine a section 1983 action against a school board with a defense of sovereign immunity. 496 U.S. at 375-80. The parties in that case disagreed over whether the Florida statute was substantive or jurisdictional. *Id.* at 375. This Court declined to resolve the dispute, *id.*, but pointed out that calling a rule jurisdictional would not suffice unless the rule reflected genuine concerns of power over the person and competence over the subject matter. *Id.* at 381. Moreover, because the statute in *Howlett* discriminated against the federal cause of action, conferring sovereign immunity in a section 1983 action, but not in an analogous state law action, it would be invalidated even if it were regarded as jurisdictional in nature. *Id.* at 378-80.

Thus, none of these cases involved a statute, like section 24, that regulates a state court's jurisdiction over a category of claims in a manner that does not discriminate against federal claims.

B. Correction Law § 24 Constitutionally Regulates The Jurisdiction Of New York State Courts In A Manner That Does Not Discriminate Against 42 U.S.C. § 1983 Or Other Federal Claims.

Applying these principles, Correction Law § 24 passes muster under the Supremacy Clause. Under section 24, New York Supreme Court lacks "jurisdiction adequate and appropriate under established local law," *Testa*, 330 U.S. at 394, to hear plaintiff's section 1983 damages claims. The analogous claims arising under state statutory or common law will also not be entertained in New York courts. In an evenhanded fashion, the statute bars *all* private damages claims against correction employees in their personal capacities, whether arising under state or federal law, for acts or omissions in the scope of their employment. It treats litigants under section 1983 the same as similarly situated litigants seeking damages under state law and does not discriminate against section 1983 claims "solely because the suit is brought under a federal law." *McKnett*, 292 U.S. at 233-34. Thus, New York "denies resort to its courts and enforces its policy impartially, so as not to involve a discrimination against [federal] suits," *Mayfield*, 340 U.S. at 4 (citation omitted), and the Supremacy Clause is not violated.

Plaintiff acknowledges that section 24 applies equally to state and federal claims against individual correction employees (Br. 40), but nevertheless argues (Br. 36) that the provision discriminates because, like the notice-of-claim statute in *Felder*, it is imposed on a specific class of plaintiffs — here, those that seek relief from certain governmental defendants — and thus has a similar "defendant-specific focus." 487 U.S. at 145. In his decision for the Court in *Felder*, Justice Brennan noted that these facts distinguished the notice-of-claim statute from other state procedural rules generally applicable to all parties and made it discriminatory in nature. *Id.*

But the theory of discrimination articulated in *Felder* has not been applied in subsequent cases, *see* Tribe, *American Constitutional Law*, at 1277 n.40 (3d ed. 2000), and should not be applied here. First, as Justice O'Connor pointed out in dissent, because the Wisconsin statute did not treat federal claims differently from state claims, it was not "discriminatory" in the usual sense of that word. Justice O'Connor commented that "the Wisconsin statute 'discriminates' only against a right that Congress has never created: the right of a plaintiff to have the benefit of selected federal court procedures" while proceeding in the state forum with whatever advantages it may provide. *Felder*, 487 U.S. at 161 (O'Connor, J., dissenting).[14]

In any event, this "new theory of discrimination," *id.* at 160 (O'Connor, J., dissenting), was not necessary to the decision in *Felder*. The rule at issue in *Felder* did not define the jurisdiction of a state court, but simply provided a certain class of defendants with a waivable affirmative defense. Thus, the burden it imposed on section 1983 litigants was preempted under basic conflict preemption principles, without regard to any possible discrimination. *See id.* at 153-56 (White, J., concurring) (notice-of-claim rule stood as an obstacle to objectives of section 1983 articulated in *Wilson v. Garcia*, 471 U.S. 261 (1985)); *see also Howlett*, 496 U.S. at 377 (explaining *Felder*'s holding that a state cannot interfere with or frustrate a section 1983 claim over which it has jurisdiction).

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[14] It is not clear whether plaintiff sought to avail himself of any particular procedural advantages by filing his complaint in state court. Given the references in his complaints to *Howlett* and *Felder*, it seems more likely that he filed his complaints in state court expressly to challenge the constitutionality of section 24.

Felder's expansive view of discrimination has no application to state court jurisdictional rules, where neutrality between state and federal claims has long been sufficient to vindicate Supremacy Clause concerns.

Finally, while a jurisdictional barrier, like an immunity defense, defeats a plaintiff's claim, this Court has clearly held that there is an important distinction between them for purposes of the Supremacy Clause. A state may enforce a jurisdictional barrier established for good cause if it does not discriminate between state and federal claims, but it may not enforce an immunity defense that defeats a federal claim over which the state courts have accepted jurisdiction. That distinction respects the sovereign authority of the State to define the jurisdiction of its various courts, and leaves no room for application of the principle, invoked by plaintiff (Br. 24) citing *Chamber of Commerce v. Brown*, __ U.S.__, 128 S. Ct. 2408 (2008), that the State should not be permitted to accomplish indirectly what it cannot do directly.

C. Correction Law § 24 Manifests No State Hostility To The Enforcement Of Federal Rights

To the extent *Felder*'s expansive theory of discrimination reflects a concern about state statutes that manifest hostility to federal rights, that concern has no application here.

Section 24 does not, as plaintiff asserts (Br. 17-21), demonstrate hostility to federal rights. The legislative decision to remove damages claims against correction employees from the court of general jurisdiction and to assign them, as claims against the State, to a specialized Court of Claims reflects hostility neither to this category of claims, nor to the subset of claims brought under federal law. To the contrary, it reflects a concern about orderly administration of justice in courts that would otherwise be inundated with such claims, and a concern about resolving them fairly and expeditiously.

To be sure, the result of section 24's assignment of cases to the Court of Claims is that no state forum exists for a section 1983 action for damages for conduct arising out of the actions of correction employees in the scope of their employment. But this results not from a state determination to exclude section 1983 damages actions, but from the limitations inherent in section 1983 itself. It is Congress, not New York, that decided not to authorize such actions because it did not make states "persons" who can be sued under section 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989); *cf. Alden*, 527 U.S. at 758 (finding "no evidence that the

State [had] manipulated its immunity in a systematic fashion to discriminate against federal causes of action").

Contrary to plaintiff's assertion (Br. 16, 20-21), nothing in section 24 limits the claims maintainable against the State in the Court of Claims to state law claims. Indeed, while the Court of Appeals has not often addressed the issue, it has indicated that some federal statutory claims may be maintained against the State there. *See, e.g., Alston v. State of New York*, 97 N.Y.2d 159, 762 N.E.2d 923 (2001) (claim under federal Fair Labor Standards Act); *Manners v. State of New York*, 285 A.D.2d 858, 727 N.Y.S.2d 547 (N.Y. App. Div.) (same), *appeal dismissed*, 97 N.Y.2d 637, 760 N.E.2d 1289 (2001).[15] It also has recognized that the Court of Claims has jurisdiction to entertain constitutional tort claims for violations of the New York Constitution, *see Brown v. State of New York*, 89 N.Y.2d 172, 674 N.E.2d 1129 (1996), the provisions of which generally provide protections at least as broad as their federal counterparts. *See id.* at 190.[16] And nothing in *Brown*

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[15] Contrary to plaintiff's suggestion (Br. 21-22 nn.3-4), this case does not present the issue, nor did the Court of Appeals address, whether the limitations in New York's Court of Claims could be applied to federal claims brought under federal statutes that, unlike section 1983, abrogate the States' immunity from suit. Plaintiff also suggests that Correction Law § 24 could be read to apply to a suit against the State under certain federal statutes. That is incorrect. By its plain terms, section 24 applies only to damages claims against correction employees in their personal capacities. It cannot be read to implicate claims against the State.

[16] In *Brown*, constitutional tort damages claims against the State were implied for violations of the Equal Protection

(Cont'd)

precludes application of a similar analysis to federal constitutional claims.

Nor is hostility to section 1983 actions shown by the fact that litigants who choose to bring their damages claims against correction employees in state court do not obtain in the Court of Claims all the features of a section 1983 claim, such as injunctive relief, punitive damages, attorneys' fees and a jury trial. Contrary to plaintiff's suggestion (Br. 21), these features remain available in many circumstances; section 24 diverts from Supreme Court to the Court of Claims only actions for damages arising from conduct within the scope of employment. Actions for injunctive relief, and actions for damages arising out of conduct beyond the scope of employment, may be brought against individual correction employees in Supreme Court, where punitive damages, attorneys' fees, and jury trials are all available. And these reservations of jurisdiction in Supreme Court are significant.

Actions for injunctive relief have long been recognized as among the most important mechanisms for enforcing federal constitutional rights. This Court has stressed the supreme federal interest in enjoining

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(Cont'd)

and Search and Seizure Clauses of the New York Constitution. 89 N.Y.2d at 188, 674 N.E.2d at 1139; *see also Davis v. State of New York*, 5 Misc.3d 1011A, 798 N.Y.S.2d 708 (N.Y. Ct. Cl. 2004) (claim by prisoner under Cruel and Unusual Punishments Clause of state Constitution); *Student Lifeline, Inc. v. State of New York*, 16 Misc.3d 1132A, 847 N.Y.S.2d 905 (N.Y. Ct. Cl. 2007) (claim under Due Process Clause of state Constitution).

ongoing violations of federal law, noting that "[r]emedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law," whereas "compensatory or deterrence interests are insufficient to overcome the dictates of the Eleventh Amendment." *Green v. Mansour*, 474 U.S. 64, 68 (1985); *see also Alden*, 527 U.S. at 757 ("Established rules provide ample means to correct ongoing violations of law and to vindicate the interests which animate the Supremacy Clause.").

At the same time, actions for injunctive relief have enormous potential to intrude on state processes and to impose substantial costs on the State. If New York were hostile to the assertion of rights under section 1983, it could have removed injunctive actions as well as damages actions from the jurisdiction of the Supreme Court, but it did not. Indeed, the availability of attorneys' fees is most important as an inducement to lawyers in injunctive actions, because they can produce no monetary fund from which counsel can be paid. *See Pulliam v. Allen*, 466 U.S. 522, 527 n.4 (1984); *see also* S. Rep. No. 94-1011 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5908, 5910 (42 U.S.C. § 1988 modeled in part on fee provision in Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a-3(b), which authorizes only injunctive relief, and thus where need for attorneys' fees most clear).

Section 24 also reserves jurisdiction in New York Supreme Court over damages actions against correction employees in their personal capacities for acts that are outside the scope of employment. For such egregious conduct, New York provides neither indemnification, *see* N.Y. Public Officers Law § 17, nor diversion of the resulting claims to its Court of Claims. These are the cases in which punitive damages are most likely to be appropriate, and Supreme Court retains jurisdiction over them. *See Waxter v. State of New York*, 33 A.D.3d 1180, 826 N.Y.S.2d 753 (N.Y. App. Div. 2006) (section 24 did not preclude action by inmate against correction employee personally in Supreme Court for alleged sexual assault).

It is true, as plaintiff notes (Br. 11), that damages claims that proceed in the New York Court of Claims are tried to the bench, and not to a jury. Plaintiff cites no support for his contention (Br. 25) that assigning decision-making to judges lessens the likelihood of compensation for meritorious claims. Moreover, nothing in section 1983 assures a right to a jury. Section 1983 litigants derive their right to a jury in federal court from the Seventh Amendment. That amendment has not been made applicable to the States through the Fourteenth Amendment. *See Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 418 (1996); *see also Malloy v. Hogan*, 378 U.S. 1, 4 & n.2 (1964) (enumerating amendments not found applicable to states). While New York provides a jury right under the state Constitution, N.Y. Const. art. I, § 2, no federal right would be violated if it did not. Similarly, the lack of a jury in an action for damages in the Court of Claims provides no evidence of hostility to federal rights.

Finally, the fact that New York courts have jurisdiction to hear section 1983 damages actions against other categories of state employees only confirms that section 24 does not remove section 1983 suits for damages against correction employees from Supreme Court because of their federal source. Rather, it demonstrates that section 24 responds to the special concerns that damages actions against correction employees engender, whether brought pursuant to state or federal law. This Court has "never held that a rule must be monolithic to be neutral." *Johnson*, 520 U.S. at 918 n.9. The neutrality required by the Supremacy Clause in this context is neutrality between state and federal claims, not neutrality between categories of state defendants.[17] Thus, Correction Law § 24's limitation to correction employees, applicable to state and federal claims alike, does not effect a discrimination within the purview of the Supremacy Clause.

III. CONGRESS DID NOT CLEARLY STATE AN INTENTION IN 42 U.S.C. § 1983 TO OVERRIDE STATE COURT JURISDICTIONAL RULES THAT DO NOT DISCRIMINATE AGAINST FEDERAL CLAIMS

Congress did not purport in section 1983 to override the States' historic sovereign authority to structure the jurisdiction of their own courts. The history of that statute's enactment belies any such intent, and this Court should not presume otherwise.

This Court has often repeated the general rule of statutory construction that if Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute." *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985). The rule applies if congressional action would "affect[] the federal balance in an area that has been a historic power of the States, whether or not it constitutes an abrogation of state sovereign immunity." *Raygor v. Regents of the Univ. of Minnesota*, 534 U.S. 533, 544 (2002); *see also Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (when Congress intends to preempt the historic powers of the States, it should make its intention "clear and manifest"). *Atascadero* involved the Eleventh Amendment, but the Court applies the same approach in other contexts as well. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452 (1991); *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989).

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[17] Plaintiff does not challenge section 24's limitation to claims against correction employees on equal protection grounds and should not be able to evade the standard of review that would apply to such a claim by reframing such "discrimination" as a Supremacy Clause violation.

Gregory v. Ashcroft implicated the power of Missouri to establish the qualifications of its own judges, a power reserved to the States by the Tenth Amendment, and one the Court recognized as so fundamental it "'should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States.'" 501 U.S. at 460 (quoting *Taylor v. Beckham*, 178 U.S. 548, 570-71 (1900)). The Court explained that congressional interference with this power would upset the usual constitutional balance of federal and state powers. Thus, it was "'incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides' this balance." 501 U.S. at 460 (quoting *Atascadero*, 473 U.S. at 243). No such intent could be found in the statute at issue, the Age Discrimination in

Employment Act, 29 U.S.C. § 621 *et seq.*, and thus the Court declined to find that the statute's protections extended to Missouri's judges.

Will examined the coverage of section 1983 in a context that implicated the states' historic sovereign immunity from suit in state courts. Section 1983 applies only to "persons," and the Court found that Congress's use of this term did not by itself provide a sufficiently clear statement that Congress intended the statute to subject the States to suit in state courts. 491 U.S. at 65.

The Court's decision in *Will* is particularly instructive, because the Court went on to examine the history of section 1983's enactment and found that it reinforced the view that Congress did not intend section 1983 to subject states to suit in state court. Congress had enacted the precursor to section 1983 "'in response to the widespread deprivations of civil rights in the Southern States and the inability or unwillingness of authorities in those States to protect those rights or punish wrongdoers.'" *Will*, 491 U.S. at 66 (quoting *Felder*, 487 U.S. at 147). Although Congress did not establish federal courts as the exclusive forum to remedy these deprivations, "it is plain that 'Congress assigned to the federal courts a paramount role' in this endeavor." *Id.* (quoting *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503 (1982)). *Patsy* had explained that the "very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights" and to provide "immediate access to the federal courts notwithstanding any provision of state law to the contrary." *Patsy*, 457 U.S. at 503-04 (internal quotation marks omitted).

It thus appeared highly unlikely that Congress nevertheless intended to create a cause of action against the States enforceable in state courts, which were "precisely the courts Congress sought to allow civil rights claimants to avoid through § 1983." *Will*, 491 U.S. at 66.

The power of the States to structure and regulate the jurisdiction of their own courts is an essential attribute of sovereignty that is reserved to the States by the Tenth Amendment. It is at least as essential to the independence of the States as their power to prescribe the qualifications of their judicial officers. *See Gregory*, 501 U.S. at 460 ("Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign."). As in other traditionally sensitive areas affecting the federal balance, a clear statement rule would assure "'that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.'" *Will*, 491 U.S. at 65 (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)); *see also* Sandalow, *Henry v. Mississippi and the Adequate State Ground: Proposals for a Revised Doctrine*, 1965 Sup. Ct. Rev. 187, 207 ("In the absence of a declaration by Congress that state courts must enforce rights that Congress has created, there appears to be no substantial reason why the Supreme Court should impose such an obligation.").

Section 1983 contains no such clear statement. Neither section 1983 nor its jurisdictional counterpart, 28 U.S.C. § 1343(a)(3), contain any indication that Congress intended the enactment of those provisions to intrude on the historic power of the States to structure the jurisdiction of their courts.[18] *See Douglas*, 279 U.S. at 387 (federal statute did "not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned"); *see also Mondou*, 223 U.S. at 56 (same). Because the jurisdiction of federal courts over section 1983 claims is not exclusive, state courts are presumptively authorized to exercise concurrent jurisdiction over section 1983 claims to the extent that jurisdiction exists under state law. *Claflin*, 93 U.S. at 136. However, Congress did not purport to obligate state courts to entertain section 1983 claims in disregard of state court jurisdictional rules like Correction Law § 24 that apply evenhandedly to state and federal claims. Nor did Congress except section 1983 claims from the general rule permitting defendants to remove to federal court actions asserting federal claims against them. *See* 28 U.S.C. § 1441.[19] Section 24 does not, then, "countermand Congress' judgment" (Br. 17), as plaintiff asserts.

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[18] Had the 42d Congress considered the issue of obligating state courts to hear section 1983 claims, it likely would have viewed itself as lacking that authority. As noted above, *supra* n.11, the prevailing view at that time was that state courts would entertain federal actions solely as a discretionary matter of comity and were not obligated to do so. *See FERC*, 456 U.S. at 763 n.28.

[19] In contrast, the Federal Employers' Liability Act construed in *Mondou* and *McKnett* prohibited removal to federal court of such suits brought in a state court of competent jurisdiction. *See Mondou*, 223 U.S. at 56; 28 U.S.C. § 1445 (prohibiting removal of FELA and various other federal actions).

To the contrary, the historical context of section 1983 that this Court reviewed in *Will* confirms that Congress was not concerned with mandating state court jurisdiction over section 1983 claims at all. As *Will* explained, Congress's purpose was to provide a federal forum, and thereby permit litigants to avoid state courts. Congress thus could not have been concerned with the manner in which states regulated the jurisdiction of their own courts. There is no evidence that Congress intended to intrude on this historic sovereign authority.

The clear statement rule is "an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory*, 501 U.S. at 461. Section 1983 does not clearly state an intent to intrude on the States' reserved power to structure the jurisdiction of their own courts. This Court should not presume that Congress intended to interfere with New York's core sovereign authority over the jurisdiction of New York courts. Correction Law § 24 should be upheld.

CONCLUSION

The judgment of the New York Court of Appeals should be affirmed.

Respectfully submitted,

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AMICUS
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BRIEF

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No. 07-10374

In the Supreme Court of the United States

KEITH HAYWOOD,
Petitioner,
v.
CURTIS DROWN, ET AL.
Respondents.

On Writ of Certiorari
To the New York Court of Appeals

BRIEF *AMICUS CURIAE* OF PRISONERS' LEGAL SERVICES OF NEW YORK, PRISONERS RIGHTS PROJECT, NEW YORK STATE DEFENDERS ASSOCIATION, CENTER FOR COMMUNITY ALTERNATIVES, PRISON LEGAL NEWS, UPTOWN PEOPLE'S LAW CENTER, JEROME N. FRANK, LEGAL SERVICES ORGANIZATION OF YALE LAW SCHOOL, AND CIVIL RIGHTS CLINIC OF NEW YORK UNIVERSITY SCHOOL OF LAW IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Prisoners' Legal Services of New York (PLS), a not-for-profit organization providing civil legal services to indigent inmates in New York State prisons, has been providing legal assistance to inmates for thirty-two years. PLS receives over 10,000 requests for assistance annually and serves as legal counsel to inmates on a variety of claims in the state and federal courts, including claims of excessive force, deliberate indifference and violations of due process. There are approximately 62,000 individuals in New York State prisons. PLS has a significant interest in ensuring that they have the same opportunity as other individuals in New York State to have their claims of constitutional wrongs adjudicated by the state courts.

The Legal Aid Society, a private, non-profit organization, has provided free legal assistance to indigent persons in New York City for over 125 years. Through its Prisoners' Rights Project, the Society seeks to ensure that prisoners' legal rights are fully protected. The Society advocates on behalf of prisoners in New York state prisons and New York City jails, and where necessary, conducts class action litigation relating to prison conditions and mistreatment of, and violence against, prisoners.

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[1] The parties' letter of consent to the filing of this brief has been lodged with the Clerk. Under Rule 37.6 of the Rules of the Court, *amicus curiae* states that no counsel for a party has written this brief in whole or in part and that no person or entity, other than *amicus curiae*, has made a monetary contribution to the preparation and submission of the brief.

The New York State Defenders Association (NYSDA) is a not-for-profit membership association of more than 1,500 public defenders, legal aid attorneys, 18-B counsel, private practitioners and others throughout the state. NYSDA operates the Public Defense Backup Center, offering legal consultation, research, and training to more than 5,000 lawyers who serve as public defense counsel in criminal cases in New York. Many of the clients of the public defense attorneys that are supported by NYSDA have been sentenced to incarceration in state prison. These individuals should have recourse to litigate federal civil rights claims in state Supreme Court when they have been victimized in prison.

Claudia Angelos is Professor of Clinical Law at New York University School of Law and Director of the law school's Civil Rights Clinic. Together with students who act as attorneys under her supervision, she has litigated dozens of civil rights cases involving misconduct by New York State correction officers. She teaches in the area of prisoners' rights.

The Center for Community Alternatives ("CCA") is a private, non-for-profit organization that promotes reintegrative justice and a reduced reliance on incarceration through advocacy, services, and public policy development in the pursuit of civil and human rights. Many CCA clients are facing potential prison sentences, have been imprisoned, or are currently incarcerated in New York State prisons. Much of CCA's work focuses on helping individuals successfully reintegrate into the community after incarceration, and there is no question that the conditions of an individual's confinement are a factor that informs the individual's ability to successfully reintegrate. As an organization that works with those who have been incarcerated, CCA has an interest in ensuring that such individuals have a full opportunity to vindicate – in state or federal court – any violations of their civil rights that occurred while in prison.

The Uptown People's Law Center ("UPLC") is a not-for-profit legal services center serving poor and working people in Chicago, Illinois. In addition to its legal work for community residents, UPLC represents prisoners in challenges to prison conditions, the parole system, and a variety of other matters. UPLC receives over 5,000 requests for representation every year, and has one of the largest dockets of prison cases in Illinois. UPLC files cases, and provides advice to prisoners litigating their own cases, in both federal and state courts. UPLC has a vital interest in ensuring that state courts remain available to prisoners seeking to challenge the unlawful conduct of prison officials.

At the Jerome N. Frank Legal Services Organization of the Yale Law School (LSO), law students supervised by law school faculty provide free representation to indigent people in need of legal aid. Since 1970, LSO students have provided legal assistance to persons incarcerated in state and federal prisons in Connecticut and occasionally in New York. Yale students have represented inmates in federal and state courts and before administrative agencies, in a range of proceedings including habeas and civil rights actions. The outcome of this case will potentially affect the remedies available to all inmates who seek help in the future from LSO.

Prison Legal News ("PLN") is a non-profit, charitable corporation that publishes a nationally distributed monthly journal of the same name that reports on news, recent court decisions, and other developments relating to the civil and human rights of prisoners in the United States and abroad. *PLN* has approximately 6,800 subscribers in all fifty states and abroad and eight times as many readers. PLN also advocates that prisoner victims of civil rights violations be able to vindicate their human and civil rights in the civil justice system.

Each of the amici represents or advocates on behalf of prisoners who have been victims of civil rights violations and seek relief in state courts. All share a concern that upholding the *Haywood* decision will result in a continued curtailment of the civil rights of New York state prisoners and the likelihood that New York and other states will enact similar statutes to limit the ability of other civil rights victims across the county to obtain redress for deprivations of their constitutional rights.

SUMMARY OF THE ARGUMENT

The Civil Rights Act of 1871, now known as 42 U.S.C. §1983, (hereinafter §1983), was enacted "to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992), *citing Carey v. Piphus*, 435 U.S. 247, 254-257 (1978). Though it was prompted by the abuses suffered by former slaves at the hands of many persons, including law enforcement officials, the statute was framed in the most general terms, protecting any person in the United States against deprivation of federal rights by any person acting under color of state law.

The Supremacy Clause of Article VI of the Constitution mandates that state courts are bound by the laws of the United States. States have concurrent jurisdiction over §1983 claims. Where a state creates courts of general jurisdiction that are competent to hear and decide state claims similar to those claims that arise under §1983, the state courts cannot refuse to exercise jurisdiction over the federal §1983 claims unless the state has a neutral and valid reason for doing so. There have only been three circumstances in which state courts have been allowed to refuse to exercise jurisdiction over federal causes of action. None of those circumstances, or any circumstances that are even remotely analogous, are present in this case.

Every state in the United States, including New York, exercises jurisdiction over §1983 actions. Steven H. Steinglass, *Section 1983 Litigation in State Courts*, Appendix E (Thomson West 2007). New York however, creates an exception for §1983 actions brought by individual civil rights victims who have been subjected to abuses by employees of the New York State Department of Correctional Services (DOCS). New York State's Correction Law §24 prohibits this subcategory of civil rights victims from seeking damages in state court for wrongs done to them by DOCS employees, contrary to § 1983's plain command that "*[e]very* person" who violates federal rights under color of state law shall be held liable in an action at law or otherwise.

The defendants assert that Correction Law §24 is a neutral jurisdictional rule supported by a valid state interest, to wit: "[T]o ensure that corrections employees, when acting within the scope of their employment, are not inhibited in performing their difficult duties by the threat of voluminous, vexatious and often meritless prisoner suits against them for damages." Defendants' Court of Appeals Brief pp. 11-12. The New York State Court of Appeals (Court of Appeals), with three of seven justices dissenting, found this proffered reason represented a valid state interest and upheld the constitutionality of Correction Law §24.

The defendants' rationale is inconsistent with Supremacy Clause considerations. In enacting §1983, Congress was clearly aware that the law would allow those who had been victimized an opportunity to vindicate their rights in court. In passing §1983, Congress determined that the importance of providing a mechanism for civil rights victims, including any person deprived of a federal right, to seek redress against any person acting under color of state law, outweighed any possible negative impact that such a law might have on any category of defendants. This Court has stated many times that states may not refuse to follow federal law because they disagree with it. Immunizing a class of §1983 defendants from suit in a state's courts is precisely the kind of "end run" around federal law that the Supremacy Clause prohibits.

Correction Law §24 discriminates against the litigation of a federal claim in state court. New York courts have jurisdiction over similar types of state and federal claims against similarly situated individuals and therefore have adequate and appropriate jurisdiction to decide §1983 claims against prison employees.

Correction Law §24 is not a neutral rule of judicial administration because it favors one class of New York citizens, DOCS employees, over another, all other citizens. Although this Court has never held that states *must* entertain 42 U.S.C. §1983 actions, and it need not decide that issue here, it has held that allowing states to pick and choose which state actors should be subject to §1983 liability effectively undermines the very purpose for which the statute was enacted. *Howlett v. Rose,* 496 U.S. 356, 372 (1990).

Correction Law §24 is illogical in that its actual effect does not square with its rationale. As a matter of logic, DOCS employees can be, and often are, named as defendants in §1983 actions in federal court. DOCS employees are no more inhibited from performing their duties by the threat of a state court §1983 than by one filed in federal court. Thus, excluding civil rights actions against DOCS employees from state court does not prevent the supposed harm identified by the state. Moreover, legislation such as the Prison Litigation Reform Act of 1995 (PLRA), and Civil Practice Laws and Rules 1101(f)—both passed to restrict and discourage meritless litigation by prisoners—has significantly reduced the number of filings of prisoner lawsuits across the country and in New York without contravening federal statutory rights.

Correction Law §24 impermissibly burdens a federal right by prohibiting the litigation of §1983 damage claims in state courts against a select group of state employees, creating procedural hurdles for victims of civil rights violations by DOCS personnel that are not present for other civil rights victims, denying those victims a choice of forum and, in some cases, denying those victims access to the courts. Correction Law §24 also burdens a federal right by denying a subcategory of civil rights victims in New

York State the same benefits provided other civil rights victims who chose to litigate their §1983 claims in state court such as the right to a jury trial, the right to a compensatory damage award against the offending individual, the right to punitive damages and the right to attorneys fees.

Correction Law §24 undermines firmly established principles of federalism. If the lower court's decision is upheld it will pave the way for New York State and other states to deprive other unpopular groups of their right to pursue civil rights claims in state courts, thereby 1) shifting the burden of entertaining such claims to the federal courts, 2) excluding state courts from their proper role in adjudicating federal constitutional law issues, and 3) depriving certain civil rights victims of the opportunity to litigate their claims before local judges and juries.

Correction Law §24 is not a jurisdiction limiting statute but an immunity granting statute. This immunity extends to all DOCS employees, whether the plaintiff is a prisoner alleging that prison officials were deliberately indifferent to serious medical needs, a DOCS employee alleging that his supervisor discriminated against him, or a citizen alleging that he was subject to an unreasonable search and seizure during a prison visit. While the state Court of Claims is available to prisoners seeking compensation for state tort violations, that court does *not* have jurisdiction over individual prison employees, does *not* have jurisdiction to award damages against prison employees, does *not* have the ability to award punitive damages, does *not* allow the claimant a jury trial, and does *not* have jurisdiction over claims alleging violations of federal constitutional rights. Correction Law §24 thus effectively grants prison employees absolute immunity from suits for damages in *any* state court in New York.

Just as in *Howlett*, whether Correction Law §24 is viewed as a pre-emptive immunity granting statute or, as asserted by defendants, an attempt to limit the state courts' jurisdiction, New York's refusal to entertain one discrete category of §1983 claims, when state courts hear similar state-law actions and similar federal actions, violates the Supremacy Clause. *Howlett*, 496 U.S. at 375.

APPLICABLE STATUTES AND LAW

Forty-two U.S.C. §1983 provides a remedy for individuals who have been deprived of their civil rights by persons acting under color of state law. *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). It states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to

> the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Article VI, clause 2 of the Constitution, the Supremacy Clause, states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

New York Correction Law §24 provides in pertinent part that:

> 1. No civil action shall be brought in any court of the state . . . against any officer or employee of [DOCS], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the

> discharge of the duties by such officer or employee.
>
> 2. Any [such] claim . . . shall be brought and maintained in the court of claims as a claim against the state.

ARGUMENT

I. CORRECTION LAW §24, AS APPLIED TO ACTIONS UNDER 42 U.S.C. §1983, VIOLATES THE SUPREMACY CLAUSE BECAUSE IT CONTRAVENES THE PLAIN LANGUAGE OF THE STATUTE.

New York State Supreme Courts are courts of general jurisdiction and therefore have jurisdiction over federal law claims in general and §1983 claims in particular. *Kagen v. Kagen*, 21 N.Y.2d 532 (1968). *See also Howlett v. Rose,* 496 U.S. 356 (1990), *citing Claflin*, 93 U.S. 130, 136-137; *Maine v. Thiboutot*, 448 U.S. 1 (1980)*; Martinez v. State of California*, 444 U.S. 277 (1980). When a state court entertains a federal law claim, it must entertain the whole of the relevant federal law; it cannot pick and choose among aspects of federal law, or substitute state policies that are inconsistent with the relevant federal policies. *See Felder v. Casey*, 487 U.S. 131 (1988). *See also Howlett v. Rose,* 496 U.S. 356 (1990). Thus, in *Felder*, this Court held that applying a state law notice of claim requirement to a §1983 claim violated the Supremacy Clause because there is no such requirement in §1983 itself. *Id.*, 487 U.S. at 131. Indeed, this Court has generally refused to uphold state administrative or purported jurisdictional bars to §1983 filings where the policy underlying the state law requirement was contrary to that of §1983. *See Felder*, 487 U.S. 131. *See also Martinez*, 444 U.S. 277; *Howlett*, 496 U.S. 356; *Mondou v. New York, N.H & H.R. Co.*, 223 U.S. 1 (1912); *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 234 (1934); *Testa v. Katz*, 330 U.S. 386, 394 (1947).

In *Martinez*, in the context of discussing recognized federal defenses to a §1983 action, the Court held that a state law immunity could not be applied to protect defendants who might well have been liable under § 1983 in the context of the recognized federal defenses to a § 1983 action. *Martinez*, 444 U.S. at 283. In *Howlett*, the Court held that the state's refusal to allow plaintiffs to bring §1983 suits against an entity that was, pursuant to §1983, a proper defendant, violated the Supremacy Clause. *Howlett*, 496 U.S. at 375.

The result can be no different in this case. Section 1983 unequivocally imposes liability on "*[e]very* person" who subjects another to a violation of federal rights under color of state law. Section 1983 does not exempt prison employees, and to the extent that there are reasons prison employees might appropriately be excused from liability in some cases, those reasons are addressed in the suite of *federal* immunities and other defenses recognized by this Court. When a state court with jurisdiction over §1983 claims fails to effectuate that federal statute—here, by extending liability only to "some persons" and not "every person" acting under color of state law—it directly contravenes federal law. For that reason, Correction Law §24, as applied by the court below, cannot stand.

II. CORRECTION LAW §24 AS APPLIED TO ACTIONS UNDER 42 U.S.C. §1983 IS NOT SUPPORTED BY A VALID EXCUSE OR NEUTRAL REASON.

As noted above, in New York State the Supreme Courts are courts of general jurisdiction, and that jurisdiction is "original, unlimited and unqualified." *Kagen*, 21 N.Y.2d at 537 (internal citations omitted.) Indeed, the jurisdiction and purpose of New York's Supreme Courts is so comprehensive that it encompasses every conceivable cause of action. *People v. Luce*, 204 N.Y. 478, 487-88 (1912).[2] Despite this, state courts may sometimes decline to take jurisdiction of federal claims based on a valid excuse or neutral reason. *Howlett*, 496 U.S. at 372, 381.

This Court has rejected Supremacy Clause challenges to state court rules limiting jurisdiction over federal claims only in limited situations. State policies pertaining to *forum non conveniens*, the jurisdiction of state courts of limited jurisdiction, and access to state courts by nonresidents provide the only three instances in which this Court has found that the state had a valid excuse or neutral rationale for refusing to hear a federal cause of action. *Howlett*, 496 U.S. at 381. No such neutral reason has been asserted by the defendants as their rationale for the enactment of Correction Law §24. This Court's case law confirms that there is no valid excuse or neutral reason justifying New York's exclusion from its courts of §1983 actions against a particular category of defendants.

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[2] *McKinney's Const.*, Article VI, §7.

Here, the defendants assert that Correction Law §24 is a proper subject matter limitation on the jurisdiction of the state Supreme Courts. Merely labeling a rule jurisdictional does not divest a state of its obligation to enforce federal law. *Testa v. Katz*, 330 U.S. 386, 394 (1947). In order not to offend the Supremacy Clause, the rule must address "concerns of power over the person and competence over the subject matter." *Howlett*, 496 U.S. at 381. Neither of these concerns is implicated by Correction Law §24. There is no question that state courts can exercise power over state employees, and there is no issue of competence since the state courts do entertain §1983 claims against DOCS employees for injunctive relief, and also routinely engage in judicial review of disciplinary and other administrative actions by prison administrators.[3]

This Court has examined a number of statutes that states have argued were valid restrictions on the jurisdiction of the state courts. Repeatedly, this Court has rejected the reasons proffered by the state for refusing jurisdiction.

In *Mondou v. New York, N.H & H.R. Co.*, 223 U.S. 1 (1912), the state of Connecticut refused to hear Federal Employees Liability Act (FELA) actions because it believed that the Act was "not in accord with the policy of the State," and that applying federal law was "inconvenient and confusing." Rejecting Connecticut's rationale, this Court found that a state's disagreement with Congressional policy is an insufficient reason to refuse jurisdiction over a federal cause of action. *Mondou*, 223 U.S. at 55-56. Where the relevant state court is one of general jurisdiction and has the ability to hear and resolve similar type claims between similarly situated parties, the state court is required to exercise jurisdiction over the federal action. *Id. see also Howlett*, 496 U.S. at 357.

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[3] *See Matter of Council 82, AFSCME, AFL-CIO on Behalf of Montgomery v. New York State Department of Correctional Services*, 223 A.D.2d 993 (3d Dep't 1996) (Court refused to vacate arbitration award against correction officer on charges of excessive force); *Vega v. Department of Correctional Services*, 186 A.D.2d 340 (3d Dep't 1992) (Court found DOCS was authorized to discharge former female corrections officer based on her covert and unauthorized conduct in developing close relationship with her future husband while he was inmate and parolee.); *Lucas v. Scully*, 71 N.Y.2d 399 (1988) (Court found DOCS regulations did not unconstitutionally abridged inmates right of freedom of expression); *Matter of Williams v. Coughlin*, 145 A.D.2d 771 (1988) (Court found the constitutional right to call witnesses at a disciplinary hearing can not be waived unless it is shown that the inmate was informed of the existence of that right).

Nor does refusing jurisdiction solely upon the "source of law" constitute a valid excuse or a neutral reason. *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 234 (1934) In *McKnett*, an Alabama state court refused to hear a FELA action because it held that a state statute giving Alabama state courts jurisdiction over suits arising under the laws of another state could not be extended to include causes of action arising in other states under federal law. *Id.* The Court stated: "While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law." The *McKnett* Court held that Alabama's policy "constituted discrimination against rights arising under Federal Law," *Howlett*, 496 U.S. at 373, *citing McKnett*, 292 U.S. at 234, because Alabama courts, as courts of general jurisdiction, had jurisdiction over similar types of actions involving similarly situated litigants.

Finally, when Rhode Island refused to exercise jurisdiction over a case involving the federal

Emergency Price Control Act, because it deemed the statute penal in nature, this Court once again found that since Rhode Island courts enforced the "same type of claim" under state law and similar types of claims under other Federal statutes, they had adequate and appropriate jurisdiction to adjudicate the federal claim. *Testa v. Katz*, 330 U.S. 386, 394 (1947).

A. Defendants' Excuse is Not Valid.

i. *New York State Enacted Correction Law §24 Because It Disagreed With Congress.*

Correction Law §24 should be struck down because defendants have failed to set forth either a "valid excuse" or a neutral rule of judicial administration for refusing to hear this subset of §1983 cases. *Howlett,* 496 U.S. at 380. Defendants assert that Correction Law §24 was enacted to prevent corrections officers from being subjected to vexatious, frivolous or voluminous law suits. That is, as in *Mondou*, defendants disagree with the availability of certain damage awards under federal law. In *Mondou*, the Court held that states cannot decline to enforce federal law because they consider it out of line with state policies. 223 U.S. at 55-56. Here, the application of *Mondou's* reasoning to the defendants' rationale leads to the same result.

In commenting on the Florida rule at issue in *Howlett* this Court stated: "To the extent that the Florida rule is based upon the judgment that parties who are otherwise subject to the jurisdiction of the court should not be held liable for activity that would not subject them to liability under state law, we understand that to be only another way of saying that the court disagrees with the content of federal law." *Howlett,* 496 U.S. at 379. A state policy that permits §1983 actions against some state employees for constitutional torts, but prohibits jurisdiction over other state employees for the same actions, "can be based only on the rationale that such persons should not be held liable for §1983 violations in the courts of the State." *Id.* at 380. That result is precisely what *Howlett* and the Supremacy Clause forbid.

ii. Correction Law §24 Discriminates Against §1983 Claims in Favor of Analogous State and Federal Claims.

The lower court in this case held: "New York does not discriminate against §1983 actions in favor of analogous state law claims because Correction Law §24 removes subject matter jurisdiction over any cause of action—state or federal—for money damages in state Supreme Court for conduct by DOCS employees." *Haywood v. Drown,* 9 N.Y.3d 481, 490 (2007). In so holding, the lower court interpreted *McKnett* as standing for the proposition that it is permissible for states to refuse jurisdiction over a federal claim as long as they refuse jurisdiction over the exact same state claim against the exact same defendant. Such an interpretation is an ill-conceived attempt by the lower court to severely limit the purpose and effect of the Supremacy Clause and inconsistent with this Court's decisions in *McKnett*, 292 U.S. 230 and *Testa*, 330 U.S. 386.

In *McKnett*, the Court held that since the Alabama state courts had jurisdiction over similarly situated litigants and the same types of claims as those at issue in the *McKnett* case, the state court could not refuse to exercise jurisdiction solely because suit was brought under federal law. *McKnett*, 292 U.S. at 232-234. In *Testa*, the Court noted that since Rhode Island courts had jurisdiction to hear *similar* claims arising under Rhode Island law and claims for double damages arising out of the Fair Labor Standards Act, they had "adequate and appropriate jurisdiction" to hear a claim arising under the federal Emergency Price Control Act. *Testa*, 330 U.S. at 394. Thus, if the same *type* of claim "arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim." *Martinez*, 444 U.S. at 283-284 n. 7.

The Supreme Courts in New York State exercise jurisdiction over: 1) the same *type* of state claims as were raised in this case,[4] 2) the same *type* of §1983 damage actions that were raised in this case against other state employees,[5] and 3) claims

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[4] *Ott v. Barash*, 109 A.D.2d 254 (2d Dep't 1985) (plaintiff

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allowed to pursue action against state employee tort-feasor for negligence and intentional tort in the Supreme Court "even where the employee's tortious conduct was committed in the course of his employment"). *De Vivo v. Groshjean*, 48 A.D.2d 158 (3d Dep't 1975) (New York State indemnity statute does not deprive an injured plaintiff of his right to bring a cause of action against a negligent state officer or employee in state court). *See also Civil Practice Laws and Rules* (CPLR) Section 215 setting forth statute of limitations for intentional torts such as assault and battery.

[5] In New York State, an individual subjected to excessive use of force by a New York State employee, other than a DOCS employee, can file a lawsuit in supreme court for damages and can have his claim decided by a jury. *Prior v. County of Saratoga*, 245 A.D.2d 658 (3d Dep't 1977) (arrestee found to be prevailing party in state court action filed in supreme court alleging battery and civil rights claims against county for excessive use of force by officers in sheriff's department); *see also McCummings v. New York City Transit Authority*, 177 A.D.2d 24 (1st Dep't 1992) (jury awarded robbery suspect over $4.3 million after determining officer used excessive force); *Harvey v. Brandt*, 254 A.D.2d 718 (4th Dep't 1998) (arrestee filed §1983 action against police officer in supreme court, alleging excessive force); *Farley v. Town of Hamburg*, 34 A.D.3d 1294 (4th Dep't 2006) (plaintiff filed wrongful death action against police officer alleging assault and battery, negligence and violation of constitutional and civil rights); *Nelson v. Town of Glenville*, 220 A.D.2d 955 (3d Dep't 1995) (plaintiff, father of minor, sued town and individual police officers alleging false arrest and assault and battery).

arising under other similar federal statutes.[6] The New York Court of Claims exercises jurisdiction over cognate state claims.[7] *See Testa*, 330 U.S. at 394.

As demonstrated above, Correction Law §24 prohibits state courts from adjudicating a subset of §1983 claims while analogous state law claims are litigated in the Court of Claims and generically similar state law claims and §1983 claims against other state employees are regularly litigated in the state Supreme Courts. *See Testa,* 330 U.S. 386. Thus, New York has done exactly what *Howlett* and *Testa* forbid: "refus[ed] to entertain one discrete category of §1983 claims, when the court entertains similar state-law actions against state defendants,"

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[6] New York Courts have exercised jurisdiction over a multitude of federal statutes including, the American with Disabilities Act (ADA), *Meadows v. Flemings, Inc.*, 290 A.D. 2d 386, 387 (1st Dep't 2002); the Federal Employees Liability Act, (FELA), *Hairston v. Metro-North Commuter Railroad,* 259 A.D.2d 370 (1st Dep't 1999); the Emergency Price Control Act, *Egling v. Lombardo,* 181 Misc. 108 (N.Y. City Court, 1943); and the Internal Revenue Code, *Sands v. Weingrad*, 99 Misc. 2d 598 (Sup. Ct. N.Y. Co. 1979).

[7] The New York Court of Claims exercises jurisdiction over state tort claims, including *state* constitutional claims, *see e.g., Brown v. State of New York*, 89 N.Y.2d 172, 185 (1996), but "lack[s] jurisdiction to impose damages for a violation of the Federal Constitution." *Safran v. State of New York*, 2006-018-553, Claim Nos. 112556, 112611, Motion No. M-72239, *citing Zagarella v. State of New York*, 149 A.D.2d 503(1989); *Ferrick v. State of New York*, 198 A.D.2d 822 (1993); *De LaRosa v. State of New York*, 173 Misc. 2d 1007 (1997).

Howlett, 496 U.S. at 372, and other similar federal law actions, *Testa*, 330 U.S. at 394.[8] New York Supreme Courts "[are] fully competent to provide the remedies the federal statute requires." *Howlett*, 496 U.S. at 378. By failing to provide a forum in state court for this limited category of federal claims, New York discriminates against §1983 claims brought against DOCS employees thereby violating the dictates of *Howlett*.

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[8] In commenting on the application of *Howlett* to New York's Correction Law §24, Professor Steven Steinglass writes: "The most flagrant example of a state court system selectively excluding §1983 cases is the refusal of New York courts to entertain §1983 actions against state correctional officials. . . . The Supreme Court's decision in *Howlett* overrides New York policy of precluding suits against correctional officers. The state policy is based on a substantive judgment that the state, as contrasted to state employees, should be liable for certain wrongful acts; but this state policy is not a neutral rule of judicial administration. Moreover, the willingness of New York to entertain other §1983 suits against other state employees, implicates the suggestion in *Howlett* that a state that opens its courts to some §1983 suits may not bar other §1983 suits." Steven H. Steinglass, "An Introduction to State Court Section 1983 Litigation," p. 153, in *Sword and Shield: A Practical Approach to Section 1983 Litigation* (3d ed. ABA 2006); *see also*, Steven H. Steinglass, *Section 1983 Litigation in State Courts*, Ch. 15:15 n. 23 (Thomson West 2007).

iii. Correction Law §24 Does Not Implement a Neutral State Rule of Judicial Administration.

This Court has held that "[a] valid excuse may exist when a state court refuses jurisdiction because of a neutral state rule of judicial administration." ***Howlett,*** 496 U.S. at 357 ***citing Douglas v. New York*** *N.H. & H.R. Co.*, 279 U.S. 377, 387-389. A state acts neutrally in adopting rules of judicial administration if the rule does not discriminate between citizens of a state, ***Douglas*** at 387, if the rule limits the jurisdiction of certain state courts, ***Herb v. Pitcarin,*** 324 U.S. 117 (1945), or if the rule is one of ***forum non conveniens*** showing a preference for residents over non-residents, ***State of Mo. ex. rel. Southern Ry. Co.*** *v. Mayfield*, 340 U.S. 1 (1950).

This is not a case involving state courts of limited jurisdiction. ***Kagen***, 21 N.Y.2d at 537. Nor is this a case involving the rule of *forum non conveniens*. This is a case where the statute at issue, Correction Law §24, discriminates between citizens of the state. Correction Law §24 does not seek to ensure that *all* New York State employees can do their jobs without fear of "vexatious or voluminous" lawsuits, it seeks only to protect DOCS employees from lawsuits for damages. Exempting one group of state employees from damage lawsuits in state court is not a neutral state rule of judicial administration but rather an attempt by the state to substitute its judgment for that of Congress as to which of its residents should be subjected to a federal statute. This is not a valid excuse. *Howlett,* 496 U.S. at 372.

Defendants' assertion that the purpose of Correction Law §24 is to prevent meritless lawsuits against prison guards is also strikingly similar to the rationale asserted by the *amici curiae* in *Howlett*, a rationale that this Court summarily rejected:

> The argument by *amici* that suits predicated on federal law are more likely to be frivolous and have less of an entitlement to the State's limited judicial resources warrants little response. A State may adopt neutral procedural rules to discourage frivolous litigation of all kinds, as long as those rules are not pre-empted by a valid federal law. A State may not, however, relieve congestion in its courts by declaring a whole category of federal claims to be frivolous.

Howlett, 496 U.S. at 380.

iv. Defendants' Rationale For Correction Law §24 Does Not Square With Its Practical Effect.

Defendants argue that the rationale for Correction Law §24 is to permit correction officers to perform their jobs better by relieving them of the need to defend and appear as witnesses in lawsuits.

Notwithstanding Correction Law §24, correction officers can be sued and called as witnesses in federal court and in state court injunctive actions, and can be called as witnesses in state court actions filed in the Court of Claims. Thus, prohibiting the filing of a §1983 action in state court does nothing to limit a correction officer's exposure to lawsuits and does nothing to assist correction officers in their job performance.

Moreover, although the asserted rationale for the statute is to protect correction officers from suits by prisoners, the statute itself has a much broader effect—it prevents the filing of *any* damage claim against *any* DOCS employee. Thus, in *Gore v. Kuhlman*, 217 A.D.2d 890 (3d Dep't 1995), a DOCS employee's action against a Superintendent and Deputy Superintendent for harassment was held to be prohibited by Correction Law §24. And in *Woodward v. State*, 23 A.D. 3d 852 (3d Dep't 2005), when Mr. Woodward, a corrections counselor employed by DOCS, attempted to sue various DOCS employees for violations of his constitutional rights, his lawsuit was also dismissed pursuant to Correction Law §24. Neither Mr. Gore nor Mr. Woodward were inmates, but both were prevented from suing their supervisors because of Correction Law §24. Thus, another of the defendants' asserted rationales for the statute, to attempt to prevent "meritless prisoner suits" against corrections officers for damages so that they are better able to perform their jobs, does not have that effect (because of the availability of the federal courts) and also has the effect of preventing suits by correctional employees or members of the general public against other agency personnel.[9]

III. CORRECTION LAW §24 BURDENS THE LITIGATION OF §1983 CLAIMS BY A SUBCLASS OF CIVIL RIGHTS VICTIMS BY LIMITING THE REMEDIES AVAILBLE IN STATE COURT, CREATING PROCEDURAL HURDLES AND DENYING A CHOICE OF FORUM.

In *Felder v. Casey*, 487 U.S. 131 (1988), this Court struck down a Wisconsin Notice of Claim statute as preempted by federal civil rights actions. The Court found that "the application of the notice requirement burdens the exercise of the federal right by forcing civil rights victims who seek redress in state courts to comply with a requirement that is entirely absent from civil rights litigation in federal courts," and concluded that such a burden "is inconsistent in both design and effect with the compensatory aims of the federal civil rights laws." 487 U.S. at 141.

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[9] Even if this Court were to accept defendants' purported rationale for the enactment of Correction Law §24, the passage of the Prisoner Litigation Reform Act of 1995 and the equivalent New York State legislation, *see* CPLR 1101 (f), undercut the need for the purported protection offered by Correction Law §24. These federal and state legislative efforts to reduce prisoner litigation have been shown to be effective. Between 1995 and 2000, prisoner lawsuits decreased by 39%. Eugene Novikov, *Stacking The Deck: Futility and The Exhaustion Provision of the Prison Litigation Reform Act*, University of Pennsylvania Law Review (2008). John Scalia, *Prisoner Petitions Filed in U.S. District Courts, 2000, with Trends 1980-2000, Bureau of Justice Statistics: Special Report* (Bureau of Justice Statistics, U.S. Dep't of Justice, Wash. D.C.), Jan. 2002, at 1, available at http://www.ojp.usdoj.gov/bjs/pub/pdf/ppfusd00.pdf

In analyzing whether a state rule limiting the enforcement in state court of a federal right is permissible, the Court focused on whether the rule was the natural or permissible consequence of an otherwise neutral, uniformly applicable state rule. In finding that it was not, the *Felder* Court concluded that the notice of claim rule was "imposed only upon a specific class of plaintiffs—those who sue governmental defendants—and, as we have seen, is firmly rooted in policies very much related to, and to a large extent directly contrary to, the substantive cause of action provided those plaintiffs." *Felder,* 487 U.S. at 145. Such a "burdening of a federal right," held the Court, could not stand. *Id.* In striking down the notice-of-claim requirement, the Supreme Court identified core principles of federalism:

> Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations. A state law that

> conditions that right of recovery upon compliance with a rule designed to minimize governmental liability, and that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law. Principles of federalism, as well as the Supremacy Clause, dictate that such a state law must give way to vindication of the federal right when that right is asserted in state court.

Felder, 487 U.S. at 153.

Correction Law §24 has a much more pervasive effect on the federal rights of a certain litigants—those who sue DOCS employees for money damages—than did the notice of claim requirement held impermissible in *Felder*. Correction Law §24, as it has been interpreted and applied by the courts, completely bars individuals—be they prisoners, other DOCS employees, or civilians—whose civil rights have been violated by DOCS employees, from bringing §1983 claims for damages against those employees in state court when the employees' actions were within the scope of their employment. *Haywood*, 9 N.Y.3d 481 (2007). Nor can those same victims bring a §1983 action in the Court of Claims because the state—the prescribed defendant in all Court of Claims actions—is not a person within the meaning of the statute, *see Brown v. State of New York*, 89 N.Y.2d 172, 185 (1996), and because the Court of Claims will not entertain a federal claim.[10] *Cavanaugh v. Doherty*, 243 A.D.2d 92 (1998) (holding that the state Supreme Court, not the Court of Claims is the proper forum for an action under 42 U.S.C. §1983).

Correction Law §24 burdens the litigation of a federal claim by requiring that a subcategory of civil rights victims overcome procedural hurdles to the litigation of their claims[11] and contend with the ambiguous notion of determining whether the actionable conduct was within the "scope of employment"[12] rather than relying on the straightforward and more inclusive §1983 requirement that the defendant's conduct be "under color of state law." [13]

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[10] Even if the conduct of DOCS employees could be the subject of a §1983 in the Court of Claims, the notice of claim requirements, which significantly shorten the limitations period for cases filed in the Court of Claims, would violate the Supreme Court's decision in *Felder v. Casey*, 487 U.S. 131 (1988).

[11] To obtain from the state courts the full relief to which any other victim of a civil rights violation is entitled, the victim of a civil rights violation by DOCS personnel must bring two suits in two different courts. To recover damages, he or she must sue in the Court of Claims, and to obtain injunctive or similar relief, the victim must bring a separate Article 78 proceeding or a state court §1983 proceeding. As the dissent in *Woodward* pointed out, "[n]ot only does this suggestion waste judicial resources, it demonstrates that Correction Law §24 indeed frustrates the purpose of the federal laws and burdens litigants' rights of recovery by creating obstacles to bringing such actions in state courts and requiring two separate actions in two different jurisdictions to obtain full recovery." *Woodward*, 23 A.D.3d at 857.

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[12] Correction Law §24 prohibits any civil action for damages against a DOCS employee if the conduct at issue was within the scope of employment. If a DOCS employee has engaged in actions outside of the scope of his employment, Correction Law §24 does not apply. Determining what actions constitute conduct "within the scope of employment" under Correction Law §24 is no easy task. Indeed, New York courts have had extreme difficulty coming to a consensus as to what type of conduct is "within the scope of employment" under Correction Law §24. *Compare e.g., Cepeda*, 128 A.D.2d 995 (3d Dep't 1987) (noting that the Court of Appeals in *Riviello v. Waldron*, 47 N.Y.2d 297 (1979) "instructed that an employee will be considered within the scope of his employment so long as he is discharging his duties, 'no matter how irregularly, or with what disregard of instructions,' " and finding that excessive use of force claim was within scope of employment); with *Murray v. Reif*, 36 A.D. 3d 1167 (3d Dep't 2007) (questioning the lower court's finding that the allegation that the defendant guard "assaulted plaintiff, threatened him, read his legal mail without permission, and importuned others not to feed plaintiff while he was in special housing" was clearly within scope of employment) and *Bouffard v. Lewis*, 139 Misc. 2d 786 (Sup. Ct. Alb. Co. 1988) (Kahn, J.) (holding that the allegation of excessive use of force was "certainly beyond the bounds of any recognized limits of employment.")

[13] There may be instances where the determination of whether conduct is under "color of law" is not so straightforward, but they are not likely to involve actions by correctional staff on the job.

These burdens are especially difficult for prisoners, the most likely plaintiffs in §1983 actions against DOCS employees, who usually lack the benefit of counsel and are more likely than the non-prison population to have limited literacy and reading comprehension.[14] Correction Law §24 burdens the litigation of federal claims by forcing uncounseled and often, uneducated, civil rights victims, to decide where they should file their case by guessing what actions a court might determine fall within the scope of employment, and where they guess wrong, risk having their claims dismissed.

Correction Law §24 burdens the litigation of a federal claim by denying a subclass of civil rights victims a choice of forum to which other civil rights victims are entitled. State and federal courts have concurrent jurisdiction over §1983 claims. *Allen v. McCurry*, 449 U.S. 90, 99 (1980), *citing Monroe v. Pape,* 365 U.S. 167, 183 (1961); *see also Thiboutot*, 448 U.S. 1; *Martinez,* 444 U.S. 277. Concurrent jurisdiction affords litigants a choice of forum, which "inevitably affects the scope of the substantive right to be vindicated before the chosen forum." *U.S. Bulk Carriers v. Arguelles,* 400 U.S 351, 359-360 (1971). The choice of forum is based on considerations such as the composition of the respective jury pools, the plaintiff's geographic location, the cost of litigation, including filing fees, the complexities of the applicable rules of civil procedure, access to counsel, and similar considerations.

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[14] According to a national survey "[o]nly about a third of inmates are sufficiently literate to "make literal or synonymous matches between the text and information given in the [text], or to make . . . low-level inferences." Margo Schlanger, Inmate *Litigation*, 116 Harv. L. Rev. 1555, 1610 n. 161 (2003), *citing Nat'l Ctr. for Educ. Statistics, Pub. No. 1994-102, LITERACY BEHIND PRISON WALLS* 19 tbl.2.3 (Oct. 1994), available at http://nces.ed.gov/pubs94/94102.pdf (setting out literacy scores and defining the assessed levels of competence); for updated research, see, Greenberg, E., Dunleavy, E., and Kutner, M. (2007). *Literacy Behind Bars: Results From the 2003 National Assessment of Adult Literacy Prison Survey* (NCES 2007-473). U.S. Department of Education. Washington, DC: National Center for Education Statistics, at http://nces.ed.gov/pubs2007/2007473.pdf. site last visited 7/10/07.

Most civil rights plaintiffs have a choice of forum and can file their actions in either state or federal court. The victim of a DOCS employee who seeks to litigate his entire civil rights claim in one court and to receive all the relief available under §1983 in one action, however, can file his or her action only in federal court.

In some cases, Correction Law §24 not only burdens the litigation of a federal right but also can result in a complete denial of access to the courts. The three strikes provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. Section 1915(g), prohibits a prisoner from proceeding *in forma pauperis* in federal court unless the prisoner is "under imminent danger of serious physical injury" when the prisoner has brought three or more actions in federal court that have been dismissed because they were frivolous, malicious or failed to state a cause of action.[15] *Id.* In upholding the provision's constitutionality, at least one court has relied in part on the availability of state courts to hear federal claims. In *Wilson v. Yaklich*, 148 F.3d 596, 605 (6th Cir. Ohio 1998), the court held as follows:

> Both as written and as applied in this case, § 1915(g) does not infringe upon the fundamental right of access to the

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[15] Although the word "frivolous" tends to suggest cases that are irresponsibly motivated, its actual meaning is without "an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Many cases are dismissed as frivolous, and thus are treated as "strikes" under 28 U.S.C. Sec 1915(g), which amount to mistakes of law concerning technical doctrines by often unsophisticated litigants proceeding without counsel. For example, cases are routinely treated as strikes where prisoners have mistaken the line between the domain of Sec 1983 and that of habeas corpus. *See Bure v. Miami-Dade Police Dept., 2008 WL 2374149 at *3 (S.D.Fla., June 6, 2008);* Crawford v. Kershaw County DSS, 2007 WL 2934887 at *5 (D.S.C., Oct. 5, 2007); *Gattis v. Fuller*, 2007 WL 2156697 at *2 (D.S.C., July 26, 2007); *Wells v. Caskey*, 2006 WL 2805338 at *2 (S.D.Miss., Sept. 25, 2006); *Grant v. Sotelo*, 1998 WL 740826 at *1 (N.D.Tex., Oct. 17, 1998) (citing cases) (all holding § 1983 cases that should have been filed under habeas corpus are frivolous). This is a line that this Court has been struggling to define for decades, often reversing the judgments of learned appellate judges. *See, e.g., Wilkinson v. Dotson*, 544 U.S. 74 (2005); *Muhammad v. Close*, 540 U.S. 749 (2004) (per curiam); *Preiser v. Rodriguez*, 411 U.S. 475 (1973).

> courts. The plaintiff, despite being barred from bringing his present § 1983 claims in federal court as an indigent, still had available to him at the time of the initial filing the opportunity to litigate his federal constitutional causes of action in forma pauperis in state court. *See Patsy v. Board of Regents of Florida, 457 U.S. 496, 506-07, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982).* As long as a judicial forum is available to a litigant, it cannot be said that the right of access to the courts has been denied. *Hampton, 106 F.3d at 1285.*

Correction Law §24 denies *any* judicial forum to a New York prisoner who is indigent and has had the requisite three dismissals, since he cannot file in federal court without prepaying the filing fee regardless of the merit of his claim, and cannot proceed under §1983 in state court. Thus he is denied access to courts in the most literal sense.

A. The Availability of the Court of Claims Does Nothing to Lessen the Burden on the Litigation of the Underlying Federal Claim.

Although the Court of Claims cannot entertain a §1983 federal claim, it does allow some civil rights victims to seek a tort remedy for wrongs done to them by DOCS employees, if there is a state law claim for their injury. But statutory restrictions prevent the Court of Claims from providing the same procedural rights and remedies that state and federal courts provide in §1983 actions. These statutory restrictions burden the litigation of the underlying federal claim. The Court of Claims cannot award compensatory damages against an individual, cannot award punitive damages, does not provide a jury trial and cannot award attorneys' fees.

Section 1983 states that "every person" who under color of state law subjects another person to a violation of federal rights "shall be liable to the party injured in an action at law." Imposing personal liability for such injury implements core values embodied in our Constitution and sends a clear and vital message to anyone who would violate, under color of state law, the constitutional rights of another. Holding the culpable accountable is the irreducible purpose of Section 1983 and the states may not substitute their own policy choices for that purpose.[16]

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[16] This point is far from formalistic. A judicial finding that an identified person has to pay damages for violating the constitutional rights of another person carries with it a stigma that highlights the reprehensibility of the wrongdoer's conduct as well as the significance of the rights involved. The statute at issue leaves certain victims of abuse of their federal rights without a remedy under state law against the individual wrong-doer. When a damage award is issued against an agency, the individual stigma is lost. Although there are cases

Punitive damages also serve a recognized purpose in §1983 litigation. "[T]he purpose of punitive damages is to punish the defendant and to deter him and others from similar conduct in the future." *Vasbinder v. Scott*, 976 F.2d 118, 121 (2d Cir.1992). By prohibiting a civil rights victim of a DOCS employee from obtaining punitive damages in state court from the individual who has violated his federal constitutional rights while allowing an award of such damages in other similar state law claims, Correction Law §24 burdens "one discrete category of §1983 claims." *Howlett*, 496 U.S. at 372; *see also Testa*. 330 U.S. 386.

In addition, in a §1983 action, in a New York state or federal court, a plaintiff has a right to a jury trial.[17] Congress has also authorized the award of attorneys fees to the prevailing party in a §1983 action. 42 U.S.C. §1988(b). Correction Law §24 mandates that any damage claim against a DOCS employee be pursued in the Court of Claims where there are no juries and no right to an award of

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where the state may chose to indemnify a DOCS employee after there is a finding of wrongdoing, the stigma of a finding of culpability in a public forum, accompanied by an order to pay damages is still present. Indeed, often the public is unaware of the indemnification.

[17] Plaintiffs in §1983 actions in state supreme court are afforded a trial by jury. *Barone v. City of Mount Vernon*, 170 A.D. 2d 557 (2d Dep't 1991).

attorneys fees.[18] *McKinney's Court of Claims Act* §12(3) and §27. By preventing civil rights victims of DOCS employees from suing in state Supreme Court where they could have a jury trial and, if successful, an award of attorneys fees, Correction Law §24 deliberately burdens a subclass of claims that were intended by Congress to be protected under §1983.

It is no answer to say that litigants who do not wish to bear these burdens in state court may resort to federal court, since the supremacy clause *obliges* state courts to lend themselves to the litigation of federal claims *without burdening the litigation of the federal claim*. If this argument provided a defense, then *McKnett*, *Testa* and *Howlett* would have been decided differently.

IV. CORRECTION LAW §24 UNDERMINES FIRMLY ESTABLISHED PRINCIPLES OF FEDERALSIM.

Today our system of judicial federalism allows citizens to seek vindication of their constitutional rights in either federal or state court. When this nation was originally founded, however, the state courts were the primary adjudicators of federal question cases.[19] As discussed in The Federalist, No. 82:

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[18] The lack of availability of attorneys fees makes it extremely difficult for inmates to obtain counsel even in the most meritorious cases. This, coupled with the difficulty uncounseled litigants have in determining what action is considered "within the scope of employment" further burdens the ability of these civil rights victims to litigate a federal claim.

> [I]n every case in which [state courts] were not expressly excluded by the future acts of the national legislature, they will of course take cognizance of the causes to which those acts may give birth.... [T]he inference seems to be conclusive that the state courts would have a concurrent jurisdiction in all cases arising under the laws of the union, where it was not expressly prohibited.

The Federalist No. 82, p. 555 (J. Cooke ed. 1961) (A. Hamilton)

It was not until 1875, when general federal question jurisdiction was established, that litigants in federal question cases could choose to file in either federal or state court in federal question cases. In *Robb v. Connolly*, 111 U.S. 624 (1884), this Court clarified that the creation of federal question jurisdiction did not, however, divest the state courts of their jurisdiction over federal claims: "Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States." *Id.* at 637.

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[19] At the formation of the American republic, it was widely understood that state courts were to play an important role in the interpretation of federal and constitutional law. Indeed, until 1875, the "inferior Courts" contemplated in Article III had no general jurisdiction to hear federal question cases; the task of interpreting federal and constitutional law thus fell largely to state courts, subject only to final review by the United States Supreme Court established by section 25 of the first Judiciary Act and affirmed by the Supreme Court in *Martin v. Hunter's Lessee*. Brett Christoper Gerry, *Parity Revisited: An Empirical Comparison of State and Lower Federal Court Interpretations of Nollan v. California Coastal Commission*, Harvard Journal of Law and Public Policy (1999) (citations omitted).

In 1990, this Court reiterated the vital role that state courts play in interpreting and enforcing the Federal Constitution stating as follows:

> [U]nder our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause. Under this system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.

Tafflin v. Levitt, 493 U.S. 455, 458 (1990). Thus, it is generally understood that, unless preempted, state courts have concurrent and necessary jurisdiction over all federal statutes and laws.

Constitutional claims of prisoners account for a significant amount of the federal courts' docket.

New York State is abdicating its responsibility to address those claims by prohibiting their filing in state court Correction Law §24 violates core principles of federalism by largely ousting New York state courts from analyzing federal constitutional issues that arise from the operations of the state prison system *Thiboutot*, 448 U.S 1.

V. THE CLEAR INTENT OF CORRECTION LAW §24 IS TO IMMUNIZE NEW YORK STATE DOCS EMPLOYEES.

Though the New York Court of Appeals concluded that Correction Law §24 is a jurisdictional rule, the dissent was correct in concluding that Correction Law §24 is nothing more than a statute designed to immunize DOCS employees, and as such, clearly violates the Supremacy Clause *Haywood v Drown*, 9 N Y 3d 481,500 (2008).

In *Martinez*, this Court reasoned

> A construction of the federal statute which permitted a state immunity defense to have a controlling effect would transmute a basic guarantee into an illusory promise, and the Supremacy Clause of the Constitution insures that the proper construction may be enforced . . The immunity claim raises a question of federal law.

Martinez, 444 U.S. 277, 284 n.8 , *quoting Hampton v. Chicago,* 484 F. 2d 602, 607 (7th Cir. 1973). Ten years later, this Court reaffirmed its position, stating that "a State cannot immunize an official from liability for injuries compensable under federal law." *Howlett,* 496 U.S. at 377.

Unlike true jurisdictional provisions, which funnel certain types of cases to particular forums, the statute at issue here forecloses all §1983 cases for damages against DOCS employees in state court.[20] As Judge Jones stated in his dissent in this case:

> [I]f you strip away the veneer of the majority's arguments, section 24, a statute which, on its face, precludes anyone, including other DOCS employees and prisoners, from bringing damages claims against DOCS personnel - - is not a *neutral* jurisdictional barrier to a particular type of claim.
>
> In reality, section 24 functions as an immunity statute that allows state courts to selectively exclude prisoner suits for damages against DOCS personnel.

Haywood, 9 N.Y.3d at 500.

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[20] Although the state Court of Claims is available to victims of civil rights violations by DOCS employees, that court does not have jurisdiction over individual prison employees.

In *Howlett*, 496 U.S. 377, this Court held that "[f]ederal law makes governmental defendants that are not arms of the State, such as municipalities, liable for their constitutional violations." Like the state law at issue in the *Howlett* case, Correction Law §24 confers absolute immunity for constitutional torts on a subgroup of such defendants, DOCS employees.

CONCLUSION

Whether the Court concludes that Correction Law §24 is an attempt to limit the jurisdiction of New York's state courts or confer immunity upon a select group of state employees, the statute runs afoul of the principles so clearly articulated in *Howlett*, *See* 496 U.S. at 375. New York State has chosen to constitute Supreme Courts of general jurisdiction and to exercise jurisdiction over federal claims, including §1983 actions by private citizens against state employees. New York's state courts are fully competent to provide the remedies provided by the federal statute. *Id.* at 378-379. New York State cannot substitute its policies for those of Congress. The defendants' purported rationale for Correction Law §24 does not constitute a valid excuse or neutral reason as defined by this Court. Correction Law §24 burdens the litigation of a federal claim and undermines firmly established principles of federalism. For these reasons, and to ensure that other states do not attempt an end-run around this

Court's clear direction that the Supremacy Clause prohibits states from enacting statutes that undermine or defeat rights created by federal statutes, this Court should reverse the lower court decision.

Dated: Ithaca, New York
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◆

KEITH HAYWOOD,

Petitioner,

—v.—

CURTIS DROWN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI
TO THE NEW YORK COURT OF APPEALS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae listed in Appendix A are professors of constitutional law and of federal jurisdiction. *Amici* hold different views on many issues related to federal courts jurisprudence as well as the theories and interpretive practices of constitutional law. *Amici* come together in this case because of their shared recognition of the importance of the interdependence of the federal and state court systems. They are concerned that the decision of the New York Court of Appeals reflects serious misunderstandings both of the Supremacy Clause and of this Court's jurisprudence on the role of state courts in adjudicating cases under 42 U.S.C. § 1983.

SUMMARY OF ARGUMENT

As professors who study civil procedure, federal jurisdiction, and constitutional issues, *amici* believe that the decision of the New York Court of Appeals in *Haywood v. Drown*, 881 N.E.2d 180 (N.Y. 2007), *cert. granted,* 128 S. Ct. 2938 (2008), fails to recognize the role of state courts in applying federal law and incorrectly denies the obligation of New York state courts to enforce a remedy in a federal statute. The Supremacy Clause makes federal law the law of the land, and, as the Court has long emphasized, a state court is as much "subject . . . to the laws of the United States, and is just as much bound to recognize these [laws of the United States] as operative within the State as it is to recognize the State laws." *Claflin v. Houseman*, 93 U.S. 130, 137 (1876). When a state entertains federal causes of action, as New York has done, it has an obligation to follow and to apply federal law, and must provide the remedies available under federal law. *See infra* at Point I.

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

New York Correction Law § 24 bars all damages claims in state court against state corrections officers individually for actions undertaken as they discharge their duties. N.Y. Correct. Law § 24 (2003). As applied to Mr. Haywood's claim, New York Correction Law § 24 contravenes the Supremacy Clause, both by creating an absolute immunity for corrections officers that does not exist under federal law and by extinguishing the damages remedy that does exist against such defendants.

The issue here is *not* whether New York has an obligation to entertain § 1983 actions. New York has made it unnecessary to ask that question by electing to have its courts regularly hear § 1983 actions for damages against various state and local government employees and by permitting § 1983 claims for declaratory and injunctive relief against state corrections officers. What Correction Law § 24 does is exempt one set of defendants, state corrections officers, from liability for damages under federal law when those cases are litigated in New York state courts, thereby extinguishing a remedy and creating a new defense to § 1983 actions in New York state courts. New York lacks the power to reshape federal law in this fashion. *See infra* at Point II.

The New York Court of Appeals upheld Correction Law § 24 on the ground that it is a neutral jurisdictional rule applicable to both state and federal claims and that, as such, it affords the State of New York a "valid excuse" to eliminate a federal remedy against a narrow class of defendants. The Court of Appeals's use of the jurisdictional label is at odds with decisions of the Court as to what constitutes a "neutral rule of judicial administration" for purposes of determining whether a state has a "valid excuse." *See infra* at Point III.[2]

Correction Law § 24 simply reflects the state's disagreement with the content of federal law. Extinguishing a federal remedy for such a reason is not a "valid excuse" under the Court's jurisprudence.

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[2] The Court of Appeals decision also fails to appreciate the Court's long-standing recognition that, under federal law, questions of "jurisdiction" and "relief" reflect two separate inquiries. *See Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557, 561 (1968) ("The nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy."); *see also Davis v. Passman*, 442 U.S. 228, 239 n.18 (1979) ("*jurisdiction* is a question of whether a federal court has the power . . . to hear a case . . . and *relief* is a question of the various remedies a federal court may make available"). Notwithstanding the Court of Appeals's use of the jurisdictional label, this is not a case where — as a matter of federal law — a state's jurisdiction is limited, but one in which a state has attempted to extinguish a remedy expressly granted by federal law.

As applied to § 1983 actions, Correction Law § 24, therefore, violates the Supremacy Clause and contravenes the obligation of state courts to enforce federal law.

ARGUMENT

I. In Our Federal System, When a State Enforces Federal Law, It May Not Selectively Modify the Federal Remedies Provided

The federal "constitution and the laws made in pursuance thereof are supreme; . . . they control the constitution and laws of the respective States, and cannot be controlled by them." *McCulloch v. Maryland*, 17 U.S. 316, 426 (1819). This proposition is rooted in the Supremacy Clause, which provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, § 2.

Supremacy is intrinsic to our system of governance because the federal government "is the government of all; its powers are delegated by all; it represents all, and acts for all." *McCulloch*, 17 U.S. at 405. Supremacy requires that "[t]he nation, on those subjects on which it can act, must necessarily bind its component parts," *id.*, and once "Congress has acted, the laws of the states, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is." *Mondou v. New York, New Haven & Hartford R.R. Co.*, 223 U.S. 1, 55 (1912).

Consistent with the supremacy of federal law, state courts and federal courts "together form one system of jurisprudence," which allows for "rights, whether legal or equitable, acquired under the laws of the United States, [to] be prosecuted in the United States courts, or in the State courts, competent to decide rights of the like character and class." *Claflin*, 93 U.S. at 136-37; *see also U.S. v. Bank of N.Y. & Trust Co.*, 296 U.S. 463, 479 (1936) ("Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them."). Indeed, until 1875, when Congress first provided general federal question jurisdiction to the lower federal courts, "the state courts provided the only forum for vindicating many important federal claims." *Palmore v. U.S.*, 411 U.S. 389, 401 (1973).

In recognition of the role state judicial proceedings play in the enforcement of federal rights and remedies, such proceedings, including § 1983 actions, have *res judicata* and collateral estoppel effect in federal court, *see Allen v. McCurry*, 449 U.S. 90, 95-96 (1980). The goal, as the Court explained, is not only to "reduce unnecessary litigation and foster reliance on adjudication, but also promote the comity between state and federal courts that has been recognized as a bulwark of the federal system." *Id.*

As the Court has frequently recognized, in order for this interdependent system of federal and state courts to function properly, when state courts address federal claims, they cannot change the remedial scheme that federal law provides. *See Testa v. Katt*, 330 U.S. 386, 391 (1947) (holding that the obligation of the state courts under the Supremacy Clause to enforce federal laws "is not lessened by the form in which they are cast or the remedy which they provide").[3] If a state rule would "'frequently and predictably produce different outcomes' depending on whether § 1983 claims were brought in state or federal court, it [is] inconsistent with the federal interest in uniformity." *Johnson v. Fankell*, 520 U.S. 911, 920 (1997) (quoting *Felder v. Casey*, 487 U.S. 131, 138 (1988)). States "may not alter the outcome of federal claims . . . by demanding compliance with outcome-determinative rules that are inapplicable when such claims are brought in federal court." *Felder*, 487 U.S. at 152.

The Court has held expressly that states cannot decline jurisdiction over a federal claim on the ground that "[an] act of Congress is not in harmony with the policy of the state"; rather, a state court's jurisdiction to hear a federal claim "creates an implication of duty to exercise it." *Mondou*, 223 U.S. at 57-58; *see Testa*, 330 U.S. at 394 (state courts with adequate jurisdiction to adjudicate federal claims "are not free to refuse enforcement of [the] claim"); *Tafflin v. Levitt*, 493 U.S. 455, 466 (1990) ("To hold otherwise would not only denigrate the respect accorded coequal sovereigns, but would also ignore our consistent history of hospitable acceptance of concurrent jurisdiction." (quotation marks omitted)). So engrained is the presumption of state court jurisdiction that "an affirmative act of power under the Supremacy Clause" is required "to oust the States of jurisdiction." *Id.* at 470 (Scalia, J., concurring).[4]

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[3] This precept is as true for § 1983 claims as for other federal actions. *See* Steven H. Steinglass, *Litigating Section 1983 Actions in State Courts*, 731 PLI/Lit 921, 927-937 (2005) (discussing concurrent jurisdiction over § 1983 actions). For discussion of the authority of federal courts to shape the remedies available for deprivations of federal rights, *see* Richard H. Fallon, Jr. & Daniel J. Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 Harv. L. Rev. 1733 (1991).

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[4] For a discussion of the benefits of concurrent jurisdiction, *see* Lauren Robel, *Impermeable Federalism, Pragmatic Silence, and the Long Range Plan for the Federal Courts*, 71 Ind. L.J. 841, 850 (1996) ("[J]urisdictional redundancy is a blessing, allowing for the development of empathy between the sovereigns, and an enrichment of the law. Litigants have certainly benefited from the ability to make choices about the expertise and neutrality of the forum in which to bring their claims . . . [and] [w]e can largely ignore many unanswerable issues about parity between state and federal courts by giving litigants choices about where to pursue federal claims, while maximizing the possibility that deserving federal claims will be vindicated."). *See also* Robert M. Cover, *The Uses of Jurisdictional Redundancy: Interest, Ideology and Innovation*, 22 Wm. & Mary L. Rev. 639 (1981).

Erwin Chemerinsky points to the concurrent jurisdiction provided by many federal statutes "as embodying a desire to allow litigants with constitutional claims to choose between federal and state courts" and observes further that "a virtue of this approach is that it rests on the simple premise that Congress intended federal courts to provide an alternative

Correction Law § 24 and the decision of the New York Court of Appeals fail to adhere to these fundamental principles. New York Correction Law § 24 provides, in pertinent part:

> 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department [of corrections], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

N.Y. Correct. Law § 24.

Correction Law § 24 thus requires that claims for damages that would be brought against state corrections officers in the New York supreme courts (including claims under § 1983) be brought *instead* against the State of New York in the state court of

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forum to state courts for the protection of constitutional rights." Erwin Chemerinsky, *Ending the Parity Debate*, 71 B.U. L. Rev. 593, 604 (1991).

claims. Because, under the Court's decision in *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989), states do not qualify as "person[s]" against whom actions for damages may be maintained under § 1983, the effect of Correction Law § 24 is to extinguish the federal damages remedy of § 1983 altogether in actions against state corrections officers individually.[5]

As a general matter, New York's courts of general jurisdiction (named its supreme courts) hear § 1983 actions.[6] These courts entertain all § 1983 claims except for damages claims against state corrections officers. *See Haywood*, 881 N.E.2d at 191 (Jones, J., dissenting). Indeed, the New York supreme courts hear § 1983 claims for injunctive or declaratory relief against state corrections officers, which Correction Law § 24 does not bar, and hear claims for damages under § 1983 against other government employees, including city and county corrections officers.[7] By means of Correction Law § 24, however, New York has selectively closed its doors to a subset of such claims — those that seek a damages remedy against state corrections officers.

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[5] The New York courts have followed *Will* without question. *See, e.g.*, *Brown v. New York*, 674 N.E.2d 1129 (N.Y. 1996) (recognizing that, under federal law, state is not a "person" under 42 U.S.C. § 1983 and, accordingly, any claim under § 1983 or § 1981 *against the State of New York* is barred); *Lyles v. New York*, 752 N.Y.S.2d 523, 525 (Ct. Cl. 2002), *aff'd*, 770 N.Y.S.2d 81 (App. Div. 2003) (acknowledging the "settled" federal law that "the State is not 'a person' within the meaning of section 1983" and that, accordingly, "no action will lie against the State" under § 1983 or § 1981 (citing *Brown*)).

[6] Because New York supreme courts entertain § 1983 actions, this case presents no occasion for the Court to decide whether state courts *must* entertain such actions. *See Martinez v. California*, 444 U.S. 277, 283 n.7 (1980) ("We have never considered . . . the question whether a State *must* entertain a claim under § 1983."); *Nat'l Private Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 587 n.4 (1995).

II. New York Lacks the Authority to Deprive Section 1983 Claimants of a Damages Remedy

A. Section 1983 Expressly Provides a Damages Remedy Against Individuals

A principal purpose of § 1983 was to enforce the Fourteenth Amendment to the Constitution and to provide a federal cause of action for deprivations, under color of state law, of any right guaranteed by the Fourteenth Amendment. *See Mitchum v. Foster*, 407 U.S. 225, 238, 240 (1972); *Monroe v. Pape*, 365 U.S. 167, 171 (1961), *overruled in part by Monell v. Dep't of Soc. Servs. of the City of N.Y.*, 436 U.S. 658, 663 (1978). "The rights enforceable under § 1983 include those guaranteed by the Federal Government in the Fourteenth Amendment: that every person within the United States is entitled to equal protection of the laws and to those 'fundamental principles of liberty and justice' that are contained in the Bill of Rights and 'lie at the base of all our civil and political institutions.'" *Wilson v. Garcia*, 471

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[7] *See, e.g., Lopez v. Shaughnessy*, 688 N.Y.S.2d 614 (App. Div. 1999) (reversing dismissal of § 1983 action against county corrections officers); *Cooper v. Morin*, 375 N.Y.S.2d 928 (App. Div. 1975) (same); *Hernandez v. City of New York*, 799 N.Y.S.2d 369 (Sup. Ct. 2005) (allowing amended complaint against city department of corrections).

U.S. 261, 278 (1985); *see also*, *Cong. Globe*, 42d Cong., 1st Sess. 335 (1871).

Section 1983 provides that "'(e)very person' who acts under color of state law to deprive another of a constitutional right shall be answerable to that person in a suit for damages." *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976). The plain language of the statute makes clear that when a plaintiff proves the violation of a federal right by someone acting under color of state law, the defendant "shall be liable to the party injured . . . for redress" and that "[e]very person . . . shall be liable." 42 U.S.C. § 1983. Indeed, this Court has recognized that a primary purpose of § 1983 is to provide such compensation. *Carey v. Piphus*, 435 U.S. 247, 254-57 (1978).

The fact that a plaintiff may recover damages directly from an individual is a critical component of § 1983: "In enacting § 1983, Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations." *Felder*, 487 U.S. at 153; *see Carey*, 435 U.S. at 256-57; *Monroe*, 365 U.S. at 176-77. The availability of damages from an individual also serves the purpose of deterrence. *Memphis Comm. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986).[8] Damages recoverable under § 1983

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[8] In concluding that a municipality was not entitled to immunity, the Court likewise recognized that "[a] damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees." *Owen v. City of Independence, Mo.*, 445 U.S. 622, 651 (1980).

"Additionally, damage awards are one way of affirming legal rights and thus of educating the moral sentiments of the community." Peter W. Low & John C. Jeffries, Jr., *Federal* include monetary harm, reputational injuries, and mental and emotional distress. *Id.* (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) and *Carey*, 435 U.S. at 264). In addition, punitive damages are available against certain defendants in § 1983 cases, upon a showing of requisite intent. *Smith v. Wade*, 461 U.S. 30, 56 (1983).[9] When explaining the remedial parameters, the Court has frequently cited the legislative history of § 1983.[10]

B. A State May Not Create a New Defense to a Federal Law by Immunizing a Class of Defendants

Over many decades and in a range of contexts, the Court has carefully defined the criteria to be met for a § 1983 claim, including the showing necessary for liability and the defenses available. In particular,

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Courts and the Law of Federal-State Relations 1107 (5th ed. 2004).

[9] Under 42 U.S.C. § 1988 (2006), § 1983 defendants also may be liable for attorney's fees. This aspect of the remedy, the Court noted in *Carey*, "provides additional — and by no means inconsequential — assurance that agents of the State will not deliberately ignore due process rights." 435 U.S. at 257 n.11. *See also Maine v. Thiboutot*, 448 U.S. 1, 11 (1980) (recognizing that attorney's fees are integral part of remedies necessary under § 1983).

[10] Commenting on the congressional debates with respect to § 1 of the Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13 (1871) (current version at 42 U.S.C. § 1983 (2006)), which was the predecessor to § 1983, the Court in *Monell*, for example, observed that "[i]n both Houses, statements of the supporters of § 1 [of the Civil Rights Act of 1871] corroborated that Congress . . . intended to give a broad remedy for violations of federally protected civil rights." 436 U.S. at 685.

the Court has established a comprehensive set of immunities predicated on "a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Owen v. City of Independence, Mo.*, 445 U.S. 622, 638 (1980) (quoting *Imbler*, 424 U.S. at 421). The Court has not construed § 1983 to grant such an immunity unless that immunity was "well established at common law at the time § 1983 was enacted, and where its rationale was compatible with the purposes of the Civil Rights Act." *Id.* at 638.[11] Such immunities, because they derive from the Court's interpretations of § 1983, are controlled by federal law. *See, e.g., id.* at 647 n.30 (stating with respect to municipalities, that immunity defenses to a federal action "are, of course, controlled by federal law"); *see also Howlett v. Rose,* 496 U.S. 356, 375 (1990) ("The elements of, and the defenses to, a federal cause of action are defined by federal law.") (citing *Monessen Sw. Ry. Co. v. Morgan*, 486 U.S. 330, 335 (1988); *Chesapeake & Ohio Ry. Co. v. Kuhn*, 284 U.S. 44 (1931)).[12]

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[11] Further, "[a]lthough an immunity must be grounded in history for the Supreme Court to decide that Congress intended to incorporate it in § 1983 jurisprudence, the mere fact that an immunity has some historical roots does not mean that the Court will automatically recognize it. Even when the Court can identify a common law tradition, the Court has consistently considered 'whether § 1983's history or purposes nonetheless counsel against recognizing the same immunity in § 1983 actions.'" 2 Rodney A. Smolla, *Federal Civil Rights Acts* § 14:27 (3d ed. 2001) (quoting *Tower v. Glover*, 467 U.S. 914, 920 (1984)).

[12] *See generally* Richard H. Fallon, Jr. et al., *Hart and Wechsler's The Federal Courts and the Federal System* 1122 (5th ed. 2003) (explaining that federal law "governs the immunity"

Under federal law, corrections officers are entitled to qualified, not absolute, immunity. *Procunier v. Navarette*, 434 U.S. 555, 561 (1978); *see also Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (explaining that, under federal law, a state corrections officer is immune from liability for § 1983 damages provided the officer "did not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known'") (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). As with other such immunities, the recognition of qualified immunity for state corrections officers and other prison officials was predicated on "a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Owen*, 445 U.S. at 637-38 (quoting *Imbler*, 424 U.S. at 421) (referencing the Court's grant of qualified immunity to state prison officials and officers in *Procunier*, 434 U.S. at 561).[13]

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in actions based on federal law "even when brought against state officials"); Steven H. Steinglass, *An Introduction to State Court Section 1983 Litigation*, in *Sword and Shield: A Practical Approach to Section 1983 Litigation* 139, 174-75 (Mary Massaron Ross & Edwin P. Voss, Jr. eds., 3d ed. 2006) (explaining the nature of § 1983 immunities and that federal law governs their availability).

[13] Other immunities of varying scope apply to different state and local officials sued under § 1983. *See, e.g., Imbler*, 424 U.S. at 431 (absolute immunity for prosecutors in initiating and presenting the State's case); *O'Connor v. Donaldson*, 422 U.S. 563, 577 (1975) (qualified immunity for superintendent of state hospital); *Wood v. Strickland*, 420 U.S. 308, 322 (1975) (qualified immunity for local school board members); *Scheuer v. Rhodes*, 416 U.S. 232, 247-48 (1974) (qualified immunity for state Governor and other executive officers for discretionary

The immunity created by New York Correction Law § 24 is not such an immunity. New York completely frees state corrections officers from suits for damages in any New York court for actions taken in their official capacity and in the scope of their duties. Because it significantly expands the immunity provided under federal law, to the extent Correction Law § 24 applies to § 1983 actions, it is void under the Supremacy Clause.[14] *See Martinez v. California*, 444 U.S. 277, 284 n.8 (1980) ("Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 . . . cannot be immunized by state law. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the [S]upremacy [C]lause of the Constitution insures that the proper construction may be enforced.") (citing *Hampton v. City of Chicago*, 484 F.2d 602, 607 (7th Cir. 1973), *cert. denied*, 415 U.S. 917 (1974)).[15]

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acts performed in the course of official conduct), *abrogated on other grounds by Harlow*, 457 U.S. 800, *and Davis v. Scherer*, 468 U.S. 183 (1984). *See generally Owen*, 445 U.S. at 637-38.

[14] Given the legislative history of § 1983, including the distrust of state courts evidenced therein, *see Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 505-506 & n.9 (1982), there is no basis to conclude that Congress intended to permit states to have the power to curtail federal remedies and exempt a particular group from liability.

[15] Although Congress, through legislation such as the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. §§ 1997-1997j (2006), and the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66 to 1321-77 (codified in scattered sections of the U.S.C.), has enacted limitations on § 1983 claims by prisoners, Congress has not

C. A State May Not Extinguish a Damages Remedy Provided by Federal Law

A state and its courts may not extinguish a federal remedy. In *Dice v. Akron, Canton & Youngstown R.R. Co.*, 342 U.S. 359 (1952), the plaintiff brought claims under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60 (2006), in state court. Relying on a state common law doctrine that signed releases, even if fraudulently obtained, defeated any right to damages, a state appellate court overturned a verdict in the plaintiff's favor. The Court reversed and reinstated the verdict, stating:

> State laws are not controlling in determining what the incidents of this federal right shall be. Manifestly the federal rights affording relief to injured railroad employees under a federally declared standard could be defeated if states were permitted to have the final say as to what defenses could and could not be properly interposed to suits under the Act. Moreover, only if federal law controls can the federal Act be given the uniform application throughout the country essential to effectuate its purposes.

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expanded the immunity of state corrections officers. As set forth above, for New York to do so here is inconsistent with Congressional intent and void under the Supremacy Clause. *Cf. Felder*, 487 U.S. at 149.

Id. at 361 (citation omitted). *See also Brown v. W. Ry. of Ala.*, 338 U.S. 294, 299 (1949) (holding that "desirable uniformity in adjudication of federally created rights could not be achieved" if overly-exacting state pleading requirements were allowed to defeat recovery under FELA).

As with FELA, the

> benefits of the [Civil Rights] Acts were intended to be uniform throughout the United States, . . . the protection to the individual to be afforded by them was not intended by Congress to differ from state to state, and . . . the amount of damages to be recovered by the injured individual was not to vary because of the law of the state in which the federal court suit was brought.

Basista v. Weir, 340 F.2d 74, 86 (3d Cir. 1965). The court in *Basista* went on to note that "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Id.* at 87 (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)).[16]

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[16] Even when federal statutes do not expressly address a component of a damages remedy, the Court has held that applicable state provisions must not be "inconsistent with the federal policy underlying the cause of action under consideration." *Robertson v. Wegmann*, 436 U.S. 584, 590 (1978) (quoting *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 465 (1975)).

Unlike New York and its courts, other state courts entertaining § 1983 claims have held that substantive state limitations on remedies available for violations of § 1983 are not enforceable in their courts. For example, the Supreme Court of Oregon, sitting *en banc*, concluded that it could not apply the limitations on compensatory damages in the Oregon Tort Claims Act to a § 1983 claim. *Rogers v. Saylor*, 760 P.2d 232 (Or. 1988) (en banc). Stating that "[n]either the Oregon legislature nor the Oregon courts can limit the rights that a plaintiff has in a federal claim, even when that federal claim is brought in state court," *id.* at 242, the Oregon court determined that the state cap on compensatory damages was tantamount to an impermissible grant of "partial immunity to persons acting under color of law for wrongful conduct under section 1983." *Id.* at 238. Citing *Felder*, *Owen*, and *Smith*, the Oregon court also held that the same Oregon statute could not be applied to eliminate punitive damages for § 1983 claims. *Id.* at 239.[17]

The Court has never upheld a state-created barrier to a § 1983 plaintiff's recovery. To the contrary, the Court in *Felder* expressly rejected a state-created limitation on the right of recovery under § 1983, where that restriction was "manifestly inconsistent with the purposes of the federal statute." 487 U.S. at 141. Like the state rule in *Felder*, New York's refusal to adjudicate and enforce the damages remedy available under § 1983 against state corrections officers "thwart[s] the congressional remedy", *id.* at 139, and is "patently incompatible with the compensatory goals of the federal legislation." *Id.* at 143.[18]

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[17] Other state courts have similarly recognized that states may not limit the damages available for § 1983 claims. *See Sundholm v. City of Bettendorf*, 389 N.W.2d 849, 853 (Iowa 1986) (regardless of state law, plaintiff has right to seek damages that would be recoverable under § 1983); *Thompson v. Village of Hales Corners*, 340 N.W.2d 704, 708-09 (Wis. 1983) (state-imposed limits on liability do not apply to federal claims, including § 1983); *Janda v. City of Detroit*, 437 N.W.2d 326, 331 (Mich. Ct. App. 1989), *appeal denied*, 434 Mich. 901 (1990) (federal, not state, standards govern damages for deprivation of federal right).

III. The Court of Appeals Mischaracterized Section 24 as Jurisdictional and Incorrectly Found that It Provided a "Valid Excuse" for Denying a Federal Remedy

In analyzing Correction Law § 24, the Court of Appeals referred to the principle that "[t]he Supremacy Clause gives states the power to deny enforcement of a federal right if they have a 'valid excuse' for doing so" *Haywood*, 881 N.E.2d at 183 (quoting *Howlett*, 496 U.S. at 369) (quotation marks omitted). The Court of Appeals cited *Howlett* for the proposition that "[o]ne permissible exception" that allows states to deny enforcement of a federal right is "when a state court lacks jurisdiction due to a

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[18] In *Felder*, the respondents sought to distinguish the notice-of-claim provision at issue from "statutory limits on recovery" and "partial immunities," which they conceded were "preempted." 487 U.S. at 142. Correction Law § 24's extinguishment of a damages remedy in § 1983 actions against corrections officers goes well beyond either a notice-of-claim provision or a statutory limit on damages. Accordingly, under *Felder*, this provision is clearly inconsistent with federal law. *Id.*

'neutral state rule regarding the administration of the courts'." *Id.* at 184. Concluding that Correction Law § 24 is such a rule, the Court of Appeals found that the State of New York had a "valid excuse" for denying enforcement of a federal right. *Id.*

The Court of Appeals committed a critical error in its analysis because it failed to acknowledge that the jurisdiction of New York's supreme courts is in fact wholly "adequate and appropriate under established local law" to hear damages claims and award damages remedies under § 1983. *Howlett*, 496 U.S. at 374 (quoting *Testa*, 330 U.S. at 394). The New York courts entertain such damages claims, and award such damages remedies, against other state and local government employees.[19] The New York courts are therefore "fully competent to provide the remedies [§ 1983] requires." *Howlett*, 496 U.S. at 378-79.

Correction Law § 24 is plainly not a "neutral state rule regarding the administration of the courts," *Haywood*, 881 N.E.2d at 184 (quoting *Howlett*, 496 U.S. at 372), under the Court's precedents in *Douglas v. New York, New Haven & Hartford R.R. Co.*, 279 U.S. 377 (1929), *Herb v. Pitcairn*, 324 U.S. 117 (1945), and *Missouri ex rel. S.*

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[19] *See* Point I *supra*; *see also Woodward v. New York*, 805 N.Y.S.2d 670, 675 (App. Div. 2005) (Kane, J., dissenting) (stating that, notwithstanding Correction Law § 24, the New York supreme courts are courts of "general jurisdiction that . . . entertain[] both State and 42 USC § 1983 damages claims against State employees. Additionally, as defendants have conceded here, [New York] Supreme Court retains jurisdiction to adjudicate claims for injunctive and declaratory relief against DOCS officers and employees under [§ 1983].")

Ry. Co. v. Mayfield, 340 U.S. 1 (1950). In each of those three cases (which are the only cases in which the Court has found a jurisdictional rule to constitute a "valid excuse"), the state rule required either conduct or the presence of the parties within the city or state where the claim would be heard, without which there would be no jurisdiction. *See Howlett*, 496 U.S. at 381.

In *Douglas*, for example, the plaintiff's residence, the place where the injuries occurred, and the defendant's residence were all outside the state where the claim had been brought. 279 U.S. at 385. In *Herb*, a provision of the state constitution rendered city courts without jurisdiction in any case where the cause of action arose outside the city, but allowed such cases to be brought in the county circuit court. 324 U.S. at 118-120. *Mayfield* simply concerned enforcement of the state's *forum non conveniens* doctrine. 340 U.S. at 3. None of these cases involved the extinguishment of a federal remedy against parties — such as state corrections officers — who are plainly within the state's boundaries and subject to its jurisdiction.

As the Court has emphasized, the fact that a state court has chosen to describe a rule as jurisdictional does not transform it into a law that properly addresses the personal and subject matter jurisdictional limits of state courts. "The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'" *Howlett*, 496 U.S. at 382-83 (holding that to rule otherwise would permit a state to "overrule our decision in *Felder v. Casey* . . . by simply amending its notice-of-claims statute to provide that no state court would have jurisdiction of an action in which the plaintiff failed to give the required notice"). It is a "general and unassailable proposition" that "States may establish the rules of procedure governing litigation in their own courts," *Felder*, 487 U.S. at 138. They may also use whatever terms they wish in characterizing their own rules.[20] But when "state courts entertain a federally created cause of action, the federal right cannot be defeated by the forms of local practice." *Id.* (quotation marks omitted).[21]

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[20] The New York statute does not even describe Correction Law § 24 as "jurisdictional." The law is simply entitled "Civil actions against department personnel." N.Y. Correct. Law § 24.

[21] The Court's decision in *Johnson v. Fankell* is instructive. There, the Court upheld the application of Idaho Appellate Rule 11(a)(1) to a § 1983 action even though the state rule delayed until final judgment an appeal from a denial of qualified immunity that could have been heard immediately in federal court pursuant to 28 U.S.C. § 1291. The Court found that the Idaho appellate rule was not "outcome determinative" in that an appeal from the final judgment in the state court was still available. The Court distinguished the case from *Felder*, noting that in *Felder*, failure to comply with the Wisconsin notice-of-claim statute "resulted in a judgment dismissing a complaint that would not have been dismissed — at least not without a judicial determination of the merits of the claim — if the case had been filed in a federal court." 520 U.S. at 920 (citing *Felder*, 487 U.S. at 138).

Pursuant to Correction Law § 24, plaintiffs suing state corrections officers under § 1983 in state court do not even have the option of complying with a state rule. Rather, their damages remedy is extinguished even before they bring suit — a result that is wholly inconsistent with *Felder*, *Howlett*, and *Johnson*.

Contrary to the state rules at issue in *Douglas*, *Herb*, and *Mayfield*, Correction Law § 24 reflects New York's substantive disagreement with the scope of remedies provided by § 1983 to the extent the federal statute allows damages against state corrections officers.[22] As articulated by New York jurists, the unvarnished purpose of Correction Law § 24 is to avoid "voluminous, vexatious and, in many cases, meritless suits brought by prisoners" against corrections officers and the personal liability that may result from such suits. *Haywood*, 881 N.E.2d at 187 (Jones, J., dissenting) (citing *Arteaga v. State*, 527 N.E.2d 1194 (N.Y. 1988)); *see also Ierardi v. Sisco*, 119 F.3d 183, 187 (2d Cir. 1997) (citing *Arteaga*) (same).[23] As such, its purpose is comparable to that of the notice-of-claim provision in *Felder*, which was described as "advanc[ing] the State's legitimate interests in protecting against stale or fraudulent claims," *Felder*, 487 U.S. at 137, and "sift[ing] out 'specious claims'." *Id.* at 149.

In contrast, and as set forth in Point II *supra*, the "central purpose" — i.e., the federal policy — supporting § 1983 is "to provide compensatory relief to those deprived of their federal rights by state actors." *Felder*, 487 U.S. at 141. The fact that the state has opted for a statute supported by a different policy cannot provide a "valid excuse" under the Court's jurisprudence because "[t]he Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Id.*

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[22] The fact that it is neutrally applied to state and federal claims — as was the notice-of-claim provision in *Felder* — therefore does not save it. *See Felder*, 487 U.S. at 144.

[23] New York is free, of course, to indemnify state corrections officers who are sued under § 1983 in state court, thereby alleviating concerns about the personal liability of such defendants. What New York may not do is reformulate federal law to achieve this same policy goal.

Correction Law § 24 also promises different outcomes depending on whether a § 1983 damages claim is brought in state or federal court. It is therefore "inconsistent with the federal interest in uniformity" that is so important to concurrent jurisdiction. *Johnson v. Fankell*, 520 U.S. at 920 (citing *Felder*, 487 U.S. at 153). Were a state able to opt out of specific categories of § 1983 cases, the shared responsibility of state and federal courts for enforcing federal remedies would be undermined.[24]

"Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action." *Howlett*, 496 U.S. at 377-78 (quoting *Wilson*, 471 U.S. at 269). Yet that is precisely what Correction Law § 24 and the Court of Appeals decision have done. A decision from this Court upholding the Court of Appeals ruling would allow states and their courts to pick and choose which federal claims and remedies to enforce, leaving them "free to nullify for their own people the legislative decisions that Congress has made on behalf of all the People." *Howlett*, 496 U.S. at 383.

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[24] Further, when one state opts out, it imposes burdens on the federal courts. *See Maine v. Thiboutot*, 448 U.S. 1, 11 n.12 (1980) (noting that "if fees were not available [in § 1983 cases] in state courts, federalism concerns would be raised because most plaintiffs would have no choice but to bring their complaints concerning state actions to federal courts").

CONCLUSION

For the reasons set forth above, the decision of the New York Court of Appeals upholding Correction Law § 24 as applied to § 1983 actions should be reversed.

Respectfully submitted,

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